

## 79 Am. Jur. 2d Welfare Summary

American Jurisprudence, Second Edition | May 2021 Update

### Welfare Laws

Eric C. Surette, J.D.

### [Correlation Table](#)

## Summary

### Scope:

This article discusses social welfare laws, with specific discussion of welfare laws, generally, federally assisted programs, including, among other things, programs for families and children and the supplemental nutrition assistance (food stamp) program, state and local programs, support by private persons, liability of governmental bodies for relief furnished by others, recovery of benefits or support provided, the determination and enforcement of welfare rights, and criminal liability pertaining to welfare laws and procedures.

### Federal Aspects:

Various federal statutes are relevant to or regulate public welfare laws, including provisions dealing with programs to assist needy families, older Americans, persons with developmental disabilities, and the homeless. Federal statutes also provide for programs providing medical assistance to the poor, supplemental nutrition assistance, child and family services, social services, Head Start, child care development, child care safety and health, and dependent care programs. Federal statutes also provide for the administration of these programs.

### Treated Elsewhere:

Abortion, public funding of, generally, see [Am. Jur. 2d, Abortion and Birth Control §§ 46 to 52, 86 to 89](#)

Adoption assistance, generally, see [Am. Jur. 2d, Adoption §§ 31, 32](#)

Admission upon giving of public charge bonds, see [Am. Jur. 2d, Aliens and Citizens §§ 1499 to 1502](#)

Agreements for support of persons, generally, see [Am. Jur. 2d, Support of Persons §§ 1 et seq.](#)

Aliens: admissibility when likely to become public charge, see [Am. Jur. 2d, Aliens and Citizens §§ 1432 to 1437](#)

Charitable gifts and trusts, and charities and charitable institutions and organizations, generally, see [Am. Jur. 2d, Charities §§ 1 et seq.](#)

Child's duty to support parent, see [Am. Jur. 2d, Parent and Child § 79](#)

Children: protection by state and courts, generally, see [Am. Jur. 2d, Infants §§ 12 to 29](#)

Compensation to victim of crime, see [Am. Jur. 2d, Criminal Law §§ 1234 to 1246](#)

Deportability on grounds of becoming public charge, see [Am. Jur. 2d, Aliens and Citizens §§ 1579, 1580](#)

Dependent, neglected, or delinquent children, see [Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children §§ 1 et seq.](#)

Enforcement of the legal duty to support persons, see [Am. Jur. 2d, Desertion and Nonsupport §§ 1 et seq.](#)

Federal Parent Locator Service, see [Am. Jur. 2d, Divorce and Separation § 970](#)

Fraudulent acts committed with intent or effect of facilitating alien's application for or receipt of federal benefit to which alien is not entitled, criminal liability for, see [Am. Jur. 2d, Aliens and Citizens § 2719](#)

Funded welfare benefit plans for employees, see [Am. Jur. 2d, Employment Relationship §§ 102 to 118](#)

Guardianship of minors and mentally impaired, physically disabled, or other incapacitated persons, see [Am. Jur. 2d, Guardian and Ward §§ 5 to 30](#)

Illegitimate children, support of, see [Am. Jur. 2d, Illegitimate Children §§ 90 to 97](#)

In context of divorce—"child support," see [Am. Jur. 2d, Divorce and Separation §§ 916 to 1027](#)

Indian child welfare and custody, see [Am. Jur. 2d, Indians; Native Americans §§ 116 to 139](#)

Mentally impaired persons, generally, see [Am. Jur. 2d, Mentally Impaired Persons §§ 1 et seq.](#)

Municipal corporations, powers to preserve and protect public health, safety, and morals, see [Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 386 to 391](#)

Pensions and retirement funds, generally, see [Am. Jur. 2d, Pensions and Retirement Funds §§ 1 et seq.](#)

Public health, generally, see [Am. Jur. 2d, Health §§ 1 et seq.](#)

Public housing, generally, see [Am. Jur. 2d, Housing Laws and Urban Redevelopment §§ 1 et seq.](#)

School funds and expenditures, generally, see [Am. Jur. 2d, Schools §§ 110 to 144](#)

School nutrition programs under National School Lunch Act and the Child Nutrition Act, see [Am. Jur. 2d, Schools §§ 360 to 365](#)

Social Security and Medicare, generally, see [Am. Jur. 2d, Social Security and Medicare §§ 1 et seq.](#)

Spousal support duty, generally, see [Am. Jur. 2d, Husband and Wife §§ 146 to 153](#)

Striking union workers, enactment of state laws for payment of welfare benefits to, see [Am. Jur. 2d, Labor and Labor Relations § 550](#)

Support of children: parental duty, generally, see [Am. Jur. 2d, Parent and Child §§ 42 to 69](#)

Theft or embezzlement from employee benefit plan, criminal liability for, see [Am. Jur. 2d, Larceny § 74](#)

Unemployment compensation, generally, see [Am. Jur. 2d, Unemployment Compensation §§ 1 et seq.](#)

Veterans' benefits and assistance, generally, see [Am. Jur. 2d, Veterans and Veterans' Laws §§ 1 et seq.](#)

Workers' compensation, generally, see [Am. Jur. 2d, Workers' Compensation §§ 1 et seq.](#)

**Research References:**

**Westlaw Databases**

[All Federal Cases \(ALLFEDS\)](#)  
[All State Cases \(ALLSTATES\)](#)  
[American Law Reports \(ALR\)](#)  
[West's A.L.R. Digest \(ALRDIGEST\)](#)  
[American Jurisprudence 2d \(AMJUR\)](#)  
[American Jurisprudence Legal Forms 2d \(AMJUR-LF\)](#)  
[American Jurisprudence Proof of Facts \(AMJUR-POF\)](#)  
[American Jurisprudence Pleading and Practice Forms Annotated \(AMJUR-PP\)](#)  
[American Jurisprudence Trials \(AMJUR-TRIALS\)](#)  
[United States Code Annotated \(USCA\)](#)

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## 79 Am. Jur. 2d Welfare I Refs.

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### Welfare Laws

Eric C. Surette, J.D.

### I. In General

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Public Assistance](#)  1 to 7, 11, 12, 26, 27

### A.L.R. Library

A.L.R. Index, Poor Persons

A.L.R. Index, Welfare Benefits

West's A.L.R. Digest, [Public Assistance](#)  1 to 7, 11, 12, 26, 27

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## 79 Am. Jur. 2d Welfare § 1

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### Welfare Laws

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### I. In General

## § 1. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Public Assistance](#)  1 to 7, 26, 27

The care of the poor<sup>1</sup> and the prevention of suffering from lack of the necessities of life<sup>2</sup> are recognized as being a legitimate exercise of governmental power and a proper public purpose. However, at common law, no obligation rests on any public authority to furnish poor relief, and where statutes have been enacted on the subject of poor relief, the provisions of such statutes govern.<sup>3</sup>

### Observation:

An increase in the benefits to indigent recipients of public aid after the right thereto is vested is not a gift within the meaning of a constitutional prohibition of gifts of public money to any individual.<sup>4</sup>

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### Footnotes

- 1 [Duncan v. Smith](#), 262 S.W.2d 373, 42 A.L.R.2d 754 (Ky. 1953).  
The public support of paupers is an exercise of the police power in promotion of the general welfare. [People ex rel. Heydenreich v. Lyons](#), 374 Ill. 557, 30 N.E.2d 46, 132 A.L.R. 511 (1940).

The care of the poor and the prevention of suffering of those in want from age, infirmity, or other dependency are legitimate purposes of an enlightened government. [Emily v. Missouri State Division of Family Services](#), 570 S.W.2d 783 (Mo. Ct. App. 1978).

As to taxation for purpose of relief of the poor, see [Am. Jur. 2d, State and Local Taxation § 50](#).

2 [State ex rel. Nash v. Marion County](#), 182 Tenn. 151, 184 S.W.2d 387 (1945).

3 [Mansfield General Hospital v. Board of County Com'rs of Richland County](#), 170 Ohio St. 486, 11 Ohio Op. 2d 241, 166 N.E.2d 224 (1960).

4 [Alameda County v. Janssen](#), 16 Cal. 2d 276, 106 P.2d 11, 130 A.L.R. 1141 (1940).

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## 79 Am. Jur. 2d Welfare § 2

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### Welfare Laws

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#### I. In General

## § 2. Statutory or constitutional basis of welfare and poor relief

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Public Assistance](#)  4, 11, 12

The obligation to support needy persons may result from a constitutional<sup>1</sup> or statutory<sup>2</sup> provision imposing a legal obligation. Once a provision of a state constitution mandates that aid, care, and support for the needy be provided, the legislature is prohibited from refusing to aid those whom it has classified as needy.<sup>3</sup>

Where a state constitution mandates that aid, care, and support for the needy be provided, the State is not required to meet every legitimate need of every needy person; rather, the legislature may determine who is "needy" and allocate the public dollar accordingly.<sup>4</sup> A State has wide discretion in defining who is needy and in setting benefit levels.<sup>5</sup>

### Observation:

For purposes of the public welfare system, a state is not obligated to remove obstacles that it did not create, including a lack of financial resources, nor does an individual have a right to government funding.<sup>6</sup>

Generally speaking, entitlement to government benefits is not guaranteed by the Fifth Amendment Due Process Clause but derives from an independent source such as state law, i.e., statutes or regulations that secure certain benefits and that support claims or entitlements to those benefits.<sup>7</sup> To have a property interest in a benefit, a person asserting a due process claim must

have more than an abstract need or desire for it and more than a unilateral expectation of it but must, instead, have a legitimate claim of entitlement to it.<sup>8</sup>

Medicaid, Food Stamps, and Temporary Assistance to Needy Families benefits were "property interests" within the meaning of the Due Process Clause, for purposes of a due process challenge to notices of adverse determinations that the state agency sent to applicants for welfare benefits.<sup>9</sup>

The extent of a county's duty to provide assistance to indigent persons must be determined by reference to the applicable statutes which create the duty.<sup>10</sup>

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#### Footnotes

- 1 [Brownley v. Doar](#), 12 N.Y.3d 33, 875 N.Y.S.2d 835, 903 N.E.2d 1155 (2009).
- 2 [Hunt v. Superior Court](#), 21 Cal. 4th 984, 90 Cal. Rptr. 2d 236, 987 P.2d 705 (1999); [Beers v. Pennington County](#), 2000 SD 107, 616 N.W.2d 79 (S.D. 2000) (statutory duty of county).
- 3 [Aliessa ex rel. Fayad v. Novello](#), 96 N.Y.2d 418, 730 N.Y.S.2d 1, 754 N.E.2d 1085 (2001).  
The State must provide assistance to destitute persons even if the cost of providing such assistance ultimately becomes a cost that the State or its subdivisions must bear without federal reimbursement. [In re Kittridge](#), 185 Misc. 2d 876, 714 N.Y.S.2d 653 (Fam. Ct. 2000).
- 4 [Aliessa ex rel. Fayad v. Novello](#), 96 N.Y.2d 418, 730 N.Y.S.2d 1, 754 N.E.2d 1085 (2001).
- 5 [Aliessa ex rel. Fayad v. Novello](#), 96 N.Y.2d 418, 730 N.Y.S.2d 1, 754 N.E.2d 1085 (2001).  
Although only income and resources "available" to an applicant may be considered in determining whether the individual is needy, and thus eligible for assistance, the word "needy" does not encompass a person who may create that need by failing or refusing to provide for his or her own needs. [Tutino by Portela v. Perales](#), 153 A.D.2d 181, 550 N.Y.S.2d 21 (2d Dep't 1990).
- 6 [Sojourner A. ex rel. Y.A. v. New Jersey Dept. of Human Services](#), 350 N.J. Super. 152, 794 A.2d 822 (App. Div. 2002), judgment aff'd, 177 N.J. 318, 828 A.2d 306 (2003).
- 7 [Baltimore v. District of Columbia](#), 10 A.3d 1141 (D.C. 2011).
- 8 [Town of Castle Rock, Colo. v. Gonzales](#), 545 U.S. 748, 125 S. Ct. 2796, 162 L. Ed. 2d 658 (2005); [Honulik v. Town of Greenwich](#), 293 Conn. 698, 980 A.2d 880 (2009); [Baltimore v. District of Columbia](#), 10 A.3d 1141 (D.C. 2011).
- 9 [Perdue v. Gargano](#), 964 N.E.2d 825 (Ind. 2012).
- 10 [Salts v. Lancaster County](#), 269 Neb. 948, 697 N.W.2d 289 (2005).

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## 79 Am. Jur. 2d Welfare § 3

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### Welfare Laws


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#### I. In General

### § 3. Statutory or constitutional basis of welfare and poor relief—Constitutional requirements for welfare programs

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Public Assistance](#)  3 to 7

Welfare benefits are not a fundamental right, and neither the state nor federal governments are under any sort of constitutional obligation to guarantee a minimum level of support.<sup>1</sup> However, once a state elects to establish a program of public assistance, it must meet constitutional standards and may not arbitrarily deny to a portion of its citizens the benefits of such a program.<sup>2</sup> Thus, it has been said that applicants have a constitutionally protected due process interest in government benefits for which they have applied.<sup>3</sup>

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#### Footnotes

- 1 [Lavine v. Milne](#), 424 U.S. 577, 96 S. Ct. 1010, 47 L. Ed. 2d 249 (1976); [Greene v. Commissioner of Minnesota Dept. of Human Services](#), 755 N.W.2d 713 (Minn. 2008).  
There is no fundamental right to receive Medicaid benefits. [Timm v. Montana Dept. of Public Health and Human Services](#), 2008 MT 126, 343 Mont. 11, 184 P.3d 994 (2008).  
As to constitutionality of residency requirements, see § 67.
- 2 [Westberry v. Fisher](#), 297 F. Supp. 1109 (D. Me. 1969).  
A state is constitutionally required to come to the aid of all needy residents without regard to race, religion, sexual orientation, or immigration status. [In re Kittridge](#), 185 Misc. 2d 876, 714 N.Y.S.2d 653 (Fam. Ct. 2000).
- 3 [Lewis v. New Mexico Dept. of Health](#), 275 F. Supp. 2d 1319 (D.N.M. 2003).

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## 79 Am. Jur. 2d Welfare II A Refs.

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### Welfare Laws

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### II. Federally Assisted Programs

#### A. In General; Block Grants to States for Social Services

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Public Assistance](#) 🔑 14, 19, 23, 26, 27

West's Key Number Digest, Social Security and Public Welfare 🔑 124.20, 124.25

West's Key Number Digest, [United States](#) 🔑 82(2), 82(4)

### A.L.R. Library

A.L.R. Index, Poor Persons

West's A.L.R. Digest, [Public Assistance](#) 🔑 14, 19, 23, 26, 27

West's A.L.R. Digest, Social Security and Public Welfare 🔑 124.20, 124.25

West's A.L.R. Digest, [United States](#) 🔑 82(2), 82(4)

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## 79 Am. Jur. 2d Welfare § 4

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### Welfare Laws

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## II. Federally Assisted Programs

### A. In General; Block Grants to States for Social Services

## § 4. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Public Assistance](#)  14, 26, 27

West's Key Number Digest, [United States](#)  82(2)

For the purposes of consolidating federal assistance to states for social services into a single grant, increasing state flexibility in using social service grants, and encouraging each state, as far as practicable under the conditions in that state, Congress has authorized an annual appropriation to carry out certain specified purposes.<sup>1</sup> The purposes of block grants to states for social services is to furnish services directed at the goals of:

- (1) achieving or maintaining economic self-support to prevent, reduce, or eliminate dependency;
- (2) achieving or maintaining self-sufficiency, including reduction or prevention of dependency;
- (3) preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving, rehabilitating, or reuniting families;
- (4) preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care; and
- (5) securing referral or admission for institutional care when other forms of care are not appropriate, or providing services to individuals in institutions.<sup>2</sup>

Services which are directed at these goals include but are not limited to:

- child care services
- protective services for children and adults

- services for children and adults in foster care
- services related to the management and maintenance of the home
- day care services for adults
- transportation services
- family planning services
- training and related services
- employment services
- information, referral, and counseling services
- the preparation and delivery of meals
- health support services
- appropriate combinations of services designed to meet the special needs of children, the aged, the mentally retarded, the blind, the emotionally disturbed, the physically handicapped, and alcoholics and drug addicts<sup>3</sup>

States participating in programs funded under federal block grants to the states for social services have considerable flexibility in determining eligibility for available social services.<sup>4</sup> Accordingly, when forced into making reasonable judgments due to the limited funding, a corporation providing legal services to the poor under a federal block grant program can consider various factors, including the likelihood of success on the merits, prior experience with the same clients, assessment of a client's credibility, and a responsibility to adhere to ethical considerations.<sup>5</sup>

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#### Footnotes

- |   |  |
|---|--|
| 1 | 42 U.S.C.A. § 1397.  |
| 2 | 42 U.S.C.A. § 1397.  |
| 3 | 42 U.S.C.A. § 1397a(a)(2)(A).  |
| 4 | Adams v. Department of Public Welfare, 781 A.2d 217 (Pa. Commw. Ct. 2001). |
| 5 | Adams v. Department of Public Welfare, 781 A.2d 217 (Pa. Commw. Ct. 2001). |

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## 79 Am. Jur. 2d Welfare § 5

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### II. Federally Assisted Programs

#### A. In General; Block Grants to States for Social Services

## § 5. Use of funds, generally; administration

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### West's Key Number Digest

West's Key Number Digest, [Public Assistance](#) 19

West's Key Number Digest, Social Security and Public Welfare 124.20

West's Key Number Digest, [United States](#) 82(2)

States are authorized to use social services block grant funds for services which are directed at the goals of the social services block grant program.<sup>1</sup> States are also authorized to use social services block grant funds for administration, personnel training, and retraining directly related to the provision of those services, conferences, or workshops.<sup>2</sup> Payments to a state from its allotment for any fiscal year must be expended by the state in such fiscal year or in the succeeding fiscal year.<sup>3</sup>

A state may use block grant funds to provide vouchers for services directed at the goals of the social services block grant program to families, including:

- (1) families who have become ineligible for assistance under a state program funded under the Temporary Assistance for Needy Families Program by reason of a durational limit on the provision of such assistance; and
- (2) families denied cash assistance under the state program funded under the Temporary Assistance for Needy Families Program for a child who is born to a member of the family who is a recipient of assistance under the program; or a person who received such assistance at any time during the 10-month period ending with the birth of the child.<sup>4</sup>

A method for computing each state's allotment of funds and the annual appropriation are set forth by statute.<sup>5</sup> Each state is required to report on the intended use of the payments the state is to receive under a social services block grant, must facilitate public comment on the report, and there is an ongoing requirement to revise the report to reflect changes in the actual activities assisted under a block grant.<sup>6</sup> The statutes contain enumerated limitations on the expenditure of social services block grant funds<sup>7</sup> but also provide for a waiver of such limitations under extraordinary circumstances.<sup>8</sup>

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Footnotes

- 1 [42 U.S.C.A. § 1397a\(a\)\(1\)](#).  
As to goals of social services block grant program, see [§ 4](#).
- 2 [42 U.S.C.A. § 1397a\(a\)\(2\)\(B\)](#).
- 3 [42 U.S.C.A. § 1397a\(c\)](#).
- 4 [42 U.S.C.A. § 1397a\(f\)](#).  
As to Temporary Assistance for Needy Families Program, see §§ [8](#) to [10](#).
- 5 [42 U.S.C.A. § 1397b](#).
- 6 [42 U.S.C.A. § 1397c](#).
- 7 [42 U.S.C.A. § 1397d\(a\)](#).
- 8 [42 U.S.C.A. § 1397d\(b\)](#).

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## 79 Am. Jur. 2d Welfare § 6

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### Welfare Laws

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### II. Federally Assisted Programs

#### A. In General; Block Grants to States for Social Services

## § 6. Reporting requirements

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Public Assistance](#) 23

West's Key Number Digest, Social Security and Public Welfare 124.25

Each state is required to prepare and submit annual reports on its activities carried out with social services block grant funds, which must include such information as the state finds necessary to provide an accurate description of such activities, to secure a complete record of the purposes for which funds were spent, and to determine the extent to which funds were spent in a manner consistent with the intended purposes for such funds.<sup>1</sup> Each report prepared and transmitted by a State must set forth:

- (1) the number of individuals who received services paid for in whole or in part with funds made available under this subchapter, showing separately the number of children and the number of adults who received such services, and broken down in each case to reflect the types of services and circumstances involved;
- (2) the amount spent in providing each such type of service, showing separately for each type of service the amount spent per child recipient and the amount spent per adult recipient;
- (3) the criteria applied in determining eligibility for services (such as income eligibility guidelines, sliding fee scales, the effect of public assistance benefits, and any requirements for enrollment in school or training programs); and
- (4) the methods by which services were provided, showing separately the services provided by public agencies and those provided by private agencies, and broken down in each case to reflect the types of services and circumstances involved.<sup>2</sup>

Each state has an audit requirement, and the applicable statute provides for the repayment by the state to the federal government funds found not to have been expended in accordance with the social services block grant program or an offset of such amounts against any other amount to which the state is or may become entitled under the social services block grant program.<sup>3</sup>

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Footnotes

- 1                      42 U.S.C.A. § 1397e(a).
- 2                      42 U.S.C.A. § 1397e(c).
- 3                      42 U.S.C.A. § 1397e(b).

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## 79 Am. Jur. 2d Welfare § 7

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### II. Federally Assisted Programs


#### A. In General; Block Grants to States for Social Services

## § 7. Public advisory groups; measurement and reporting of welfare receipts

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### West's Key Number Digest

West's Key Number Digest, [Public Assistance](#)  14, 23

West's Key Number Digest, [United States](#)  82(4)

The Secretary of Health and Human Services is required from time to time to appoint an Advisory Council on Public Welfare for the purpose of reviewing the administration of the public assistance and child welfare services programs for which social services block grant funds are appropriated.<sup>1</sup> The purpose of the Council is for making recommendations for improvement of such administration and reviewing the status of and making recommendations with respect to the public assistance programs for which funds are so appropriated, especially in relation to the old-age, survivors, and disability insurance program; with respect to the fiscal capacities of the states and the federal government; and with respect to any other matters bearing on the amount and proportion of the federal and state shares in the public assistance and child welfare services programs.<sup>2</sup> Provision is made for the composition and administration of the Advisory Council.<sup>3</sup>

Provision is also made for the measurement and reporting of welfare receipts in furtherance of the federal policy of reducing the rate at which and the degree to which families depend on income from welfare programs and the duration of welfare receipt.<sup>4</sup>

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### Footnotes

- 1 [42 U.S.C.A. § 1314\(a\)](#) and [42 U.S.C.A. § 1314\(e\)](#).
- 2 [42 U.S.C.A. § 1314\(a\)](#).
- 3 [42 U.S.C.A. § 1314\(b\) to \(h\)](#).
- 4 [42 U.S.C.A. § 1314a](#).

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### II. Federally Assisted Programs

#### B. Particular Programs

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## Research References

### West's Key Number Digest

West's Key Number Digest, [Civil Rights](#) 🔑 1057

West's Key Number Digest, [Constitutional Law](#) 🔑 3541, 3542, 3550

West's Key Number Digest, [Health](#) 🔑 461 to 465, 467 to 471(8), 489, 491 to 498, 507

West's Key Number Digest, [Public Assistance](#) 🔑 16, 19, 26 to 28, 31, 32, 73, 80, 82, 83, 89, 91 to 95(6), 99 to 101(7), 111 to 115, 124, 150 to 163, 170 to 196

West's Key Number Digest, [States](#) 🔑 18.79

West's Key Number Digest, [United States](#) 🔑 53(1), 82(1), 82(2)

### A.L.R. Library

A.L.R. Index, Food Stamps

A.L.R. Index, Poor Persons

West's A.L.R. Digest, [Civil Rights](#) 🔑 1057

West's A.L.R. Digest, [Constitutional Law](#) 🔑 3541, 3542, 3550

West's A.L.R. Digest, [Health](#) 🔑 461 to 465, 467 to 471(8), 489, 491 to 498, 507

West's A.L.R. Digest, [Public Assistance](#) 🔑 16, 19, 26 to 28, 31, 32, 73, 80, 82, 83, 89, 91 to 95(6), 99 to 101(7), 111 to 115, 124, 150 to 163, 170 to 196

West's A.L.R. Digest, [States](#) 🔑 18.79

West's A.L.R. Digest, [United States](#) 🔑 53(1), 82(1), 82(2)

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## 79 Am. Jur. 2d Welfare § 8

American Jurisprudence, Second Edition | May 2021 Update

### Welfare Laws

Eric C. Surette, J.D.

## II. Federally Assisted Programs

### B. Particular Programs

#### 1. Programs for Families and Children

##### a. Temporary Assistance for Needy Families

## § 8. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Public Assistance](#)  80, 82, 99 to 101(7)

### Forms

[Am. Jur. Pleading and Practice Forms, Welfare Laws § 12](#) (Petition or application—For writ of mandamus—To review agency's withdrawal of AFDC payments)

[Am. Jur. Pleading and Practice Forms, Welfare Laws § 14](#) (Petition or application—Appeal from state welfare agency administrative proceeding—By recipient of assistance under AFDC—Denial of additional assistance for transportation and childcare in connection with educational program)

The Welfare Reform Act of 1996, also known as the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA),<sup>1</sup> significantly revised the welfare system.<sup>2</sup> The PRWORA abolished the Aid to Families with Dependent Children (AFDC) Program and instituted the Temporary Assistance to Needy Families (TANF) Program. Unlike AFDC, which provided recipients with benefits as long as they were eligible, TANF limits welfare benefits to 60 months for eligible adult care-providers of a family unit. Funding for TANF assistance, like funding for AFDC before it, comes partly from federal monies disbursed to the states. Under TANF, however, receipt of these federal block grants is conditioned in part on the states' enacting legislation limiting welfare relief to recipients who comply with the more rigorous requirements of the new welfare system.<sup>3</sup>

**Observation:**

The PRWORA is not to be interpreted to entitle any individual or family to assistance under any state program funded under the Act.<sup>4</sup>

The PRWORA provides for grants to the states to carry out the purposes of the Act and provides formulas for the determination of the amount of such grants.<sup>5</sup>

**Caution:**

No officer or employee of the federal government may regulate the conduct of a state under the PRWORA or enforce any provision of the TANF program except to the extent expressly provided in the PRWORA.<sup>6</sup> However, the limitation on federal regulatory and enforcement authority provided for in the PRWORA<sup>7</sup> does not limit the effect of other federal laws, including federal employment laws (such as the Fair Labor Standards Act (FLSA), the Occupational Safety and Health Act (OSHA), and unemployment insurance and nondiscrimination laws).<sup>8</sup> These laws apply to TANF beneficiaries in the same manner as they apply to other workers.<sup>9</sup>

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Footnotes

- 1 42 U.S.C.A. §§ 601 et seq.
- 2 *Weston v. Cassata*, 37 P.3d 469 (Colo. App. 2001).
- 3 *Weston v. Cassata*, 37 P.3d 469 (Colo. App. 2001).
- 4 42 U.S.C.A. § 601(b).  
As to an individual's rights to public assistance, see § 102.
- 5 42 U.S.C.A. § 603.
- 6 42 U.S.C.A. § 617.
- 7 42 U.S.C.A. § 617.
- 8 45 C.F.R. § 260.35(b).
- 9 45 C.F.R. § 260.35(b).

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## 79 Am. Jur. 2d Welfare § 9

American Jurisprudence, Second Edition | May 2021 Update

### Welfare Laws

Eric C. Surette, J.D.

## II. Federally Assisted Programs

### B. Particular Programs


#### 1. Programs for Families and Children

##### a. Temporary Assistance for Needy Families

## § 9. Purpose

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Public Assistance](#)  83, 99

The stated purpose of the Block Grants to States for Temporary Assistance to Needy Families Program ("TANF Program")<sup>1</sup> is to increase the flexibility of the states in operating a program designed to:

- (1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
- (2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
- (3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and
- (4) encourage the formation and maintenance of two-parent families.<sup>2</sup>

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### Footnotes

<sup>1</sup> [42 U.S.C.A. §§ 601 to 619.](#)

<sup>2</sup> [42 U.S.C.A. § 601\(a\).](#)

## 79 Am. Jur. 2d Welfare § 10

American Jurisprudence, Second Edition | May 2021 Update

Welfare Laws

Eric C. Surette, J.D.

### II. Federally Assisted Programs

#### B. Particular Programs

##### 1. Programs for Families and Children

###### a. Temporary Assistance for Needy Families

## § 10. Requirements for state plans

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Public Assistance](#)  91 to 94

### Treatises and Practice Aids

[Federal Procedure, L. Ed. §§ 42:565 to 42:578](#)

States desiring to obtain a block grant under the Temporary Assistance to Needy Families Program ("TANF Program") are required to submit a state plan.<sup>1</sup> The state plan must include an outline of the state's family assistance program, which must outline how the state intends to meet certain TANF Program requirements, including how the state intends to conduct the program, require a parent or caretaker receiving assistance under the program to engage in work, ensure that parents and caretakers receiving assistance under the program engage in work activities, and establish goals and take action to prevent and reduce the incidence of out-of-wedlock pregnancies.<sup>2</sup> Among the numerous assurances required, a plan must indicate whether the State intends to treat families moving into the state from another state differently than other families under the program, and if so, how the State intends to treat such families under the program.<sup>3</sup> The plan must also indicate whether the State intends to provide assistance under the program to individuals who are not citizens of the United States, and if so, shall include an overview of such assistance.<sup>4</sup> The plan must set forth objective criteria for the delivery of benefits and the determination of eligibility and for fair and equitable treatment, including an explanation of how the State will provide opportunities for recipients

who have been adversely affected to be heard in a state administrative or appeal process.<sup>5</sup> In addition, the State must provide certification of the following:

- (1) that the State will operate a child support enforcement program;<sup>6</sup>
  - (2) that the State will operate a foster care and adoption assistance program;<sup>7</sup>
  - (3) of the administration of the program;<sup>8</sup>
  - (4) that the State will provide Indians with equitable access to assistance;<sup>9</sup> and
  - (5) of standards and procedures to ensure against program fraud and abuse.<sup>10</sup>
- A State may also provide an optional certification of standards and procedures to ensure that the State will screen for and identify domestic violence.<sup>11</sup>

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Footnotes

- |    |  |
|----|--|
| 1  | 42 U.S.C.A. § 602(a).  |
| 2  | 42 U.S.C.A. § 602(a)(1)(A).                                  |
|    | As to work requirements, see § 11.                           |
| 3  | 42 U.S.C.A. § 602(a)(1)(B)(i).                               |
|    | As to constitutionality of residency requirements, see § 67. |
| 4  | 42 U.S.C.A. § 602(a)(1)(B)(ii).                              |
|    | As to constitutionality of residency requirements, see § 67. |
| 5  | 42 U.S.C.A. § 602(a)(1)(B)(iii).                             |
| 6  | 42 U.S.C.A. § 602(a)(2).                                     |
| 7  | 42 U.S.C.A. § 602(a)(3).                                     |
| 8  | 42 U.S.C.A. § 602(a)(4).                                     |
| 9  | 42 U.S.C.A. § 602(a)(5).                                     |
| 10 | 42 U.S.C.A. § 602(a)(6).                                     |
| 11 | 42 U.S.C.A. § 602(a)(7).                                     |

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## 79 Am. Jur. 2d Welfare § 11

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### Welfare Laws

Eric C. Surette, J.D.

## II. Federally Assisted Programs

### B. Particular Programs


#### 1. Programs for Families and Children

##### a. Temporary Assistance for Needy Families

## § 11. Mandatory work requirements

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Public Assistance](#)  102

### Forms

[Am. Jur. Pleading and Practice Forms, Welfare Laws § 17](#) (Answer—Defense—By welfare department—Refusal of custodial parent to accept employment)

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) requires mandatory work, defines work activities, provides penalties for refusing to engage in work required, and provides for nondisplacement in work activities.<sup>1</sup> A parent or caretaker receiving assistance under a TANF Program must engage in work once the State determines the parent or caretaker is ready to engage in work, or once the parent or caretaker has received assistance under the program for 24 months, whichever is earlier.<sup>2</sup> A state must define what it means to engage in work for this requirement, and its definition may include participation in work activities.<sup>3</sup> If a parent or caretaker has received assistance for two months, he or she must participate in community service employment unless the State has exempted the individual from work requirements or he or she is already engaged in work activities.<sup>4</sup> The State will determine the minimum hours per week and the tasks the individual must perform as part of the community service employment.<sup>5</sup>

A state to which a grant is made is required to achieve certain minimum work participation rates as specified in the PRWORA.<sup>6</sup> A method is provided by statute for determining the required participation rates.<sup>7</sup> A factor in determining the required participation rates is the number of families receiving assistance under the State TANF Program that include an adult or a minor child head of household who is engaged in work.<sup>8</sup> A recipient is "engaged in work" if the recipient is participating in work activities for at least the minimum average number of hours per week specified by statute during a month, not fewer than a specified number of hours per week of which are attributable to certain activities described in the definition of "work activities."<sup>9</sup> Certain limitations and special rules apply.<sup>10</sup>

The PRWORA provides that while a recipient of assistance may fill a vacant employment position in order to engage in a work activity, such employment may not displace another worker from the job.<sup>11</sup> States are required to establish and maintain a grievance procedure for resolving complaints of alleged displacement violations.<sup>12</sup>

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#### Footnotes

- 1 42 U.S.C.A. § 607.
- 2 42 U.S.C.A. § 602(a)(1)(A)(ii).
- 3 45 C.F.R. § 261.10(a)(2).  
What constitutes work activities is defined by statute. 42 U.S.C.A. § 607(d).
- 4 45 C.F.R. § 261.10(b).
- 5 45 C.F.R. § 261.10(b).
- 6 42 U.S.C.A. § 607(a)(1), (2).  
As to grants to the states, see § 8.
- 7 42 U.S.C.A. § 607(b).
- 8 42 U.S.C.A. § 607(b)(1)(B)(i).
- 9 42 U.S.C.A. § 607(c)(1)(A), (B).  
What constitutes work activities is defined by statute. 42 U.S.C.A. § 607(d).
- 10 42 U.S.C.A. § 607(c)(2).
- 11 42 U.S.C.A. § 607(f)(1), (2).
- 12 42 U.S.C.A. § 607(f)(3).

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## 79 Am. Jur. 2d Welfare § 12

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### Welfare Laws

Eric C. Surette, J.D.

## II. Federally Assisted Programs

### B. Particular Programs

#### 1. Programs for Families and Children

##### a. Temporary Assistance for Needy Families

## § 12. Mandatory work requirements—Penalties against individuals

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Public Assistance](#)  102, 112(2)

If an individual in a family receiving assistance under the Temporary Assistance to Needy Families Program ("TANF Program") refuses to engage in work required, a state is required to either reduce the amount of assistance otherwise payable to the family pro rata (or more, at the option of the state) with respect to any period during a month in which the individual so refuses, or terminate such assistance, subject to such good cause and other exceptions as the State may establish.<sup>1</sup> However, a state may not reduce or terminate assistance under a TANF Program based on a refusal of an individual to engage in work required in accordance with this section if the individual is a single custodial parent caring for a child who has not attained six years of age, and the individual proves that the individual has a demonstrated inability to obtain needed child care, for one or more of the following reasons:

- (1) the unavailability of appropriate child care within a reasonable distance from the individual's home or work site;
- (2) the unavailability or unsuitability of informal child care by a relative or under other arrangements; and
- (3) the unavailability of appropriate and affordable formal child care arrangements.<sup>2</sup>

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### Footnotes

<sup>1</sup> [42 U.S.C.A. § 607\(e\)\(1\)](#).

2 42 U.S.C.A. § 607(e)(2).

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## 79 Am. Jur. 2d Welfare § 13

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### Welfare Laws

Eric C. Surette, J.D.

## II. Federally Assisted Programs

### B. Particular Programs

#### 1. Programs for Families and Children

##### a. Temporary Assistance for Needy Families

## § 13. Minor children; child support

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Public Assistance](#)  [100\(1\)](#), [100\(6\)](#) to [100\(8\)](#)

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) expressly provides that no state may use any part of a grant to provide assistance to a family unless the family includes a minor child who resides with the family or a pregnant individual.<sup>1</sup> If the agency responsible for administering the state plan determines that an individual is not cooperating with the state in establishing paternity or in establishing, modifying, or enforcing a support order with respect to a child of the individual, and the individual does not qualify for any good cause or other exception established by the State pursuant to a provision of the statute generally dealing with state plans for child and spousal support,<sup>2</sup> then the State is required to deduct from the assistance that would otherwise be provided to the family of the individual under the State TANF Program an amount equal to not less than 25% of the amount of such assistance<sup>3</sup> and may deny the family any assistance under the state program.<sup>4</sup> A state must require, as a condition of providing assistance to a family under the state program, that a member of the family assign to the state any right the family member may have (on behalf of the family member or of any other person for whom the family member has applied for or is receiving such assistance) to support from any other person, not exceeding the total amount of assistance so paid to the family, which accrues during the period that the family receives assistance under the program.<sup>5</sup>

The PRWORA also contains provisions related to child support and establishment of paternity,<sup>6</sup> including provisions as to a state's obligation to provide child support enforcement services<sup>7</sup> and locator services with regard to child support obligations.<sup>8</sup> The Act provides that the state plan for child and spousal support must provide services relating to the establishment of paternity or the establishment, modification, or enforcement of child support obligations, as appropriate, under the plan with respect to each child for whom assistance is provided under the state program.<sup>9</sup>

The provision of Title IV-D of the Social Security Act, requiring that a state operate its child support program in "substantial compliance" with Title IV-D, does not give individuals a federal right to force a state agency to substantially comply with its provisions as the requirement is not intended to benefit individual children and custodial parents but rather is simply a yardstick for the Secretary of Health and Human Services to measure the systemwide performance of a state's child support program.<sup>10</sup>

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Footnotes

- 1 42 U.S.C.A. § 608(a)(1).
- 2 42 U.S.C.A. § 654(29).
- 3 42 U.S.C.A. § 608(a)(2)(A).
- 4 42 U.S.C.A. § 608(a)(2)(B).
- 5 42 U.S.C.A. § 608(a)(3)(A).  
As to assignment of support in exchange for public assistance, generally, see § 89.
- 6 42 U.S.C.A. §§ 651 et seq.
- 7 42 U.S.C.A. § 666.
- 8 42 U.S.C.A. §§ 653, 663.
- 9 42 U.S.C.A. § 654(4)(A)(i).
- 10 *Blessing v. Freestone*, 520 U.S. 329, 117 S. Ct. 1353, 137 L. Ed. 2d 569 (1997).

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## 79 Am. Jur. 2d Welfare § 14

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### Welfare Laws

Eric C. Surette, J.D.

## II. Federally Assisted Programs

### B. Particular Programs

#### 1. Programs for Families and Children

##### a. Temporary Assistance for Needy Families

## § 14. Minor children; child support—Funding for child care

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Public Assistance](#)  104

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) provides for grants for the purpose of providing child care assistance.<sup>1</sup> Amounts received by a state under this grant may only be used to provide child care assistance.<sup>2</sup> Notwithstanding any other provision of law, amounts provided to a state for child care assistance must be transferred to the lead agency under the Child Care and Development Block Grant Act of 1990,<sup>3</sup> integrated by the State into the programs established by the State under such Act and be subject to requirements and limitations of the Act.<sup>4</sup>

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### Footnotes

- <sup>1</sup> 42 U.S.C.A. § 618(a)(1).
- <sup>2</sup> 42 U.S.C.A. § 618(b)(1).
- <sup>3</sup> 42 U.S.C.A. §§ 9858 et seq.  
As to the Child Care and Development Block Grant Act of 1990, see [§ 24](#).
- <sup>4</sup> 42 U.S.C.A. § 618(c).

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## 79 Am. Jur. 2d Welfare § 15

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### Welfare Laws

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## II. Federally Assisted Programs

### B. Particular Programs

#### 1. Programs for Families and Children

##### a. Temporary Assistance for Needy Families

## § 15. Specific limitations on assistance

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Public Assistance](#)  [100\(1\)](#) to [100\(13\)](#), [111](#) to [115](#)

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) provides that a state may not use grant funds to provide assistance to a family that includes an adult who has received assistance under any State Temporary Assistance to Needy Families Program ("TANF Program") attributable to funds provided by the federal government for more than 60 months, whether or not consecutive, after the date the state program commences.<sup>1</sup> However, a minor child exception applies, and in determining the number of months for which an individual who is a parent or pregnant has received assistance the State must disregard any month for which such assistance was provided with respect to the individual and during which the individual was a minor child and not the head of a household or married to the head of a household.<sup>2</sup> Further, under the hardship exception, a state may exempt a family from the application of the 60-month limitation on assistance by reason of hardship or if the family includes an individual who has been battered or subjected to extreme cruelty, subject to certain limitations.<sup>3</sup>

In addition, a state may not use grant funds to provide assistance to:

- (1) teenage parents who do not attend high school or other equivalent training program;<sup>4</sup>
- (2) teenage parents not living in adult-supervised settings;<sup>5</sup>
- (3) provide medical services;<sup>6</sup>



(4) an individual during the 10-year period that begins on the date the individual is convicted in federal or state court of having made a fraudulent statement or representation with respect to the place of residence of the individual in order to receive assistance simultaneously from two or more states under specific federal programs;<sup>7</sup>

(5) fugitive felons and probation and parole violators;<sup>8</sup> and

(6) minor children who are absent from the home for a significant period.<sup>9</sup>

A statute also provides that an individual convicted (under federal or state law) of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance, as specified by statute, is not be eligible for assistance under any state program funded under the statutes generally pertaining to grants to states for aid and services to needy families with children and for child-welfare services.<sup>10</sup>

A state to which a grant is made must also maintain policies and practices as necessary to prevent assistance provided under the state program from being used in any electronic benefit transfer transaction in: (1) any liquor store; (2) any casino, gambling casino, or gaming establishment; or (3) any retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment.<sup>11</sup>

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#### Footnotes

- |    |   |
|----|---|
| 1  | 42 U.S.C.A. § 608(a)(7)(A).   |
| 2  | 42 U.S.C.A. § 608(a)(7)(B).   |
| 3  | 42 U.S.C.A. § 608(a)(7)(C).   |
| 4  | 42 U.S.C.A. § 608(a)(4).  |
| 5  | 42 U.S.C.A. § 608(a)(5).  |
| 6  | 42 U.S.C.A. § 608(a)(6).  |
| 7  | 42 U.S.C.A. § 608(a)(8).  |
| 8  | 42 U.S.C.A. § 608(a)(9).  |
| 9  | 42 U.S.C.A. § 608(a)(10).   |
| 10 | 21 U.S.C.A. § 862a(a)(1) (referring to 42 U.S.C.A. §§ 601 et seq.). |
| 11 | 42 U.S.C.A. § 608(a)(12).   |

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## 79 Am. Jur. 2d Welfare § 16

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### Welfare Laws

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## II. Federally Assisted Programs

### B. Particular Programs


#### 1. Programs for Families and Children

##### a. Temporary Assistance for Needy Families

## § 16. Penalties against a state

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Public Assistance](#)  94

### Treatises and Practice Aids

[Federal Procedure, L. Ed. §§ 42:615 to 42:628](#)

The Secretary of Health and Human Services is authorized to assess penalties against a state for enumerated violations, including but not limited to:

- (1) use of funds in violation of statutory requirements;<sup>1</sup>
- (2) enhanced penalties for intentional violations;<sup>2</sup>
- (3) misuse of competitive welfare-to-work funds;<sup>3</sup>
- (4) failure to submit a required report;<sup>4</sup>
- (5) failure to satisfy minimum participation rates;<sup>5</sup>

- (6) failure to participate in the income and eligibility verification system;<sup>6</sup>
- (7) failure to comply with paternity establishment and child support enforcement requirements;<sup>7</sup>
- (8) failure to timely repay a federal loan fund for state welfare programs;<sup>8</sup>
- (9) failure of any state to maintain a certain level of historic effort;<sup>9</sup>
- (10) noncompliance of a state child support enforcement program with specified requirements;<sup>10</sup>
- (11) failure to comply with the five-year limit on assistance;<sup>11</sup>
- (12) failure of a state receiving amounts from a contingency fund to maintain 100% of historic effort;<sup>12</sup>
- (13) failure to maintain assistance to an adult single custodial parent who cannot obtain child care for a child under age six;<sup>13</sup>
- (14) failure to expend additional state funds to replace grant reductions (if applicable);<sup>14</sup>
- (15) failure of a state to maintain historic effort during a year in which a welfare-to-work grant is received;<sup>15</sup>
- (16) failure to reduce assistance for recipients refusing without good cause to work;<sup>16</sup>
- (17) failure to establish or comply with work participation verification procedures;<sup>17</sup>
- (18) failure to enforce spending policies.<sup>18</sup>

Subject to certain exceptions,<sup>19</sup> the Secretary may not impose a penalty on a State with respect to a requirement if the Secretary determines that the State has reasonable cause for failing to comply with the requirement.<sup>20</sup> Further, before imposing a penalty against a state with respect to a violation of the Act, the Secretary is required to notify the state of the violation and allow the state the opportunity to enter into a corrective compliance plan which outlines how the state will correct or discontinue, as appropriate, the violation and how the state will insure continuing compliance with the Act.<sup>21</sup>

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#### Footnotes

- 1 42 U.S.C.A. § 609(a)(1)(A).
- 2 42 U.S.C.A. § 609(a)(1)(B).
- 3 42 U.S.C.A. § 609(a)(1)(C).
- 4 42 U.S.C.A. § 609(a)(2).
- 5 42 U.S.C.A. § 609(a)(3).
- 6 42 U.S.C.A. § 609(a)(4).
- 7 42 U.S.C.A. § 609(a)(5).
- 8 42 U.S.C.A. § 609(a)(6).
- 9 42 U.S.C.A. § 609(a)(7).
- 10 42 U.S.C.A. § 609(a)(8).
- 11 42 U.S.C.A. § 609(a)(9).
- 12 42 U.S.C.A. § 609(a)(10).
- 13 42 U.S.C.A. § 609(a)(11).

14                    42 U.S.C.A. § 609(a)(12).  
15                    42 U.S.C.A. § 609(a)(13).  
16                    42 U.S.C.A. § 609(a)(14).  
17                    42 U.S.C.A. § 609(a)(15).  
18                    42 U.S.C.A. § 609(a)(16).  
19                    42 U.S.C.A. § 610(b)(2).  
20                    42 U.S.C.A. § 610(b)(1).  
21                    42 U.S.C.A. § 610(c)(1)(A).

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## 79 Am. Jur. 2d Welfare § 17

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Welfare Laws

Eric C. Surette, J.D.

### II. Federally Assisted Programs

#### B. Particular Programs

##### 1. Programs for Families and Children

###### a. Temporary Assistance for Needy Families

## § 17. Appeal of decision adverse to state

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Public Assistance](#)  124

### Treatises and Practice Aids

[Federal Procedure, L. Ed. §§ 42:613, 42:614](#)

Within five days after the date the Secretary of Health and Human Services takes any adverse action with respect to a state, the Secretary is required to notify the chief executive officer of the state of the adverse action, including any action with respect to a state plan or the imposition of a penalty against a state.<sup>1</sup> Within 60 days after the date a state receives a notice of an adverse action, the State may appeal the action, in whole or in part, to the Departmental Appeals Board established in the Department of Health and Human Services ("Board") by filing an appeal with the Board.<sup>2</sup> Procedural rules for such administrative review are provided for by statute.<sup>3</sup> Within 90 days after the date of a final decision by the Board with respect to an adverse action taken against a state, the State may obtain judicial review of the final decision (and the findings incorporated into the final decision) by filing an action in the district court of the United States for the judicial district in which the principal or headquarters office of the state agency is located or the United States District Court for the District of Columbia.<sup>4</sup> Procedural rules for such judicial review are provided for by statute.<sup>5</sup>

Footnotes

- 1                   42 U.S.C.A. § 610(a).  
As to requirements of a state plan, see § 10.  
As to assessment of penalties against a state, see § 12.
- 2                   42 U.S.C.A. § 610(b)(1).
- 3                   42 U.S.C.A. § 610(b)(2).
- 4                   42 U.S.C.A. § 610(c)(1).
- 5                   42 U.S.C.A. § 610(c)(2).

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## 79 Am. Jur. 2d Welfare § 18

American Jurisprudence, Second Edition | May 2021 Update

### Welfare Laws

Eric C. Surette, J.D.

## II. Federally Assisted Programs

### B. Particular Programs


#### 1. Programs for Families and Children

##### a. Temporary Assistance for Needy Families

## § 18. Nondiscrimination provisions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Public Assistance](#)  82

The following provisions of law apply to any program or activity which receives funds provided under the statutes generally pertaining to grants to states for aid and services to needy families with children and for child welfare services:

- (1) the Age Discrimination Act of 1975 ([42 U.S.C.A. §§ 6101 et seq.](#));
- (2) section 504 of the Rehabilitation Act of 1973 ([29 U.S.C.A. § 794](#));
- (3) the Americans with Disabilities Act of 1990 ([42 U.S.C.A. §§ 12101 et seq.](#)); and
- (4) Title VI of the Civil Rights Act of 1964 ([42 U.S.C.A. §§ 2000d et seq.](#)).<sup>1</sup>

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### Footnotes

<sup>1</sup> [42 U.S.C.A. § 608\(d\).](#)

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## 79 Am. Jur. 2d Welfare § 19

American Jurisprudence, Second Edition | May 2021 Update

### Welfare Laws

Eric C. Surette, J.D.

## II. Federally Assisted Programs

### B. Particular Programs

#### 1. Programs for Families and Children

##### b. Child Welfare Services

## § 19. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Public Assistance](#)  83, 95(1) to 95(6)

West's Key Number Digest, [United States](#)  82(1), 82(2)

### Treatises and Practice Aids

[Federal Procedure, L. Ed. § 42:1034](#)

Specific provision is made by federal statute for the Stephanie Tubbs Jones Child Welfare Services Program.<sup>1</sup> The purpose of the Stephanie Tubbs Jones Child Welfare Services Program is to promote state flexibility in the development and expansion of a coordinated child and family services program that utilizes community-based agencies and ensures all children are raised in safe, loving families by:

- (1) protecting and promoting the welfare of all children;
- (2) preventing the neglect, abuse, or exploitation of children;
- (3) supporting at-risk families through services which allow children, where appropriate, to remain safely with their families or return to their families in a timely manner;



(4) promoting the safety, permanence, and well-being of children in foster care and adoptive families; and

(5) providing training, professional development, and support to ensure a well-qualified child welfare workforce.<sup>2</sup>

Allotment of funds is provided for by statute.<sup>3</sup>

Provision is made for research, training, and qualified demonstration projects relating to the advancement of child welfare,<sup>4</sup> grants to a public or nonprofit institution for higher learning to provide traineeships,<sup>5</sup> and for a national study based on random samples of children who are at risk of child abuse or neglect, or are determined by a state to have been abused or neglected.<sup>6</sup>

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#### Footnotes

- |   |                            |
|---|----------------------------|
| 1 | 42 U.S.C.A. §§ 621 et seq. |
| 2 | 42 U.S.C.A. § 621.         |
| 3 | 42 U.S.C.A. § 623.         |
| 4 | 42 U.S.C.A. § 626(a).      |
| 5 | 42 U.S.C.A. § 626(c).      |
| 6 | 42 U.S.C.A. § 628b.        |

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## 79 Am. Jur. 2d Welfare § 20

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### Welfare Laws

Eric C. Surette, J.D.

## II. Federally Assisted Programs

### B. Particular Programs

#### 1. Programs for Families and Children

##### b. Child Welfare Services

## § 20. Child welfare service plans

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Public Assistance](#) 91 to 94

West's Key Number Digest, [United States](#) 82(2)

### Treatises and Practice Aids

[Federal Procedure, L. Ed. § 42:1035](#)

Under the Stephanie Tubbs Jones Child Welfare Services Program, in order to be eligible for a payment of grant funds, a state must have a plan for child welfare services which has been developed jointly by the Secretary of Health and Human Services and the properly designated state agency which meets statutory requirements.<sup>1</sup> The statute sets forth numerous provisions and assurances that a child welfare service plan must include.<sup>2</sup> The plan must also provide for the administration of the program and describe the services to be provided.<sup>3</sup>

### Observation:

The standard for determining whether a state has met its case plan and case review obligations under the Act is substantial compliance.<sup>4</sup>

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Footnotes

- 1                               42 U.S.C.A. § 622(a).
- 2                               42 U.S.C.A. § 622(b).
- 3                               42 U.S.C.A. § 622(b).
- 4                               Del A. v. Roemer, 777 F. Supp. 1297 (E.D. La. 1991).

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## 79 Am. Jur. 2d Welfare § 21

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### Welfare Laws

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## II. Federally Assisted Programs

### B. Particular Programs

#### 1. Programs for Families and Children


##### b. Child Welfare Services

## § 21. Payments to states

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Public Assistance](#)  89

West's Key Number Digest, [United States](#)  82(2)

From the sums appropriated for the Stephanie Tubbs Jones Child Welfare Services Program and the allotment under federal statute, subject to certain conditions, the Secretary of Health and Human Services must from time to time pay to each state that has an authorized plan an amount equal to 75% of the total sum expended under the plan (including the cost of administration of the plan) in meeting the costs of state, district, county, or other local child welfare services.<sup>1</sup> Federal statute provides for the computation and method of payment of grant funds to the states.<sup>2</sup> The statute contains limitations on the use of federal funds for child care, foster care maintenance payments, or adoption assistance payments; on use by the states of nonfederal funds for foster care maintenance payments to match federal funds; and on reimbursement for administrative costs.<sup>3</sup>

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### Footnotes

<sup>1</sup> 42 U.S.C.A. § 624(a).

<sup>2</sup> 42 U.S.C.A. § 624(b).

<sup>3</sup> 42 U.S.C.A. § 624(c).

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## 79 Am. Jur. 2d Welfare § 22

American Jurisprudence, Second Edition | May 2021 Update

Welfare Laws

Eric C. Surette, J.D.

### II. Federally Assisted Programs

#### B. Particular Programs

##### 1. Programs for Families and Children

##### b. Child Welfare Services

## § 22. Creation and enforcement of rights

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Civil Rights](#)  1057

The courts have found that the provision of the Adoption Assistance and Child Welfare Act that requires assurance from a state that it is operating a case review system for each child receiving foster care under the supervision of the state,<sup>1</sup> and the provision requiring that state plans for child welfare services "provide for the diligent recruitment" of potential foster and adoptive parents who are racially and ethnically diverse,<sup>2</sup> create rights which were enforceable by a civil rights action under [42 U.S.C.A. § 1983](#).<sup>3</sup> The basis of the enforceable rights lies in the fact that foster children have been held to be the intended beneficiaries of the statutory obligations, such obligations are mandatory, determining state compliance with these provisions is well within the abilities of the courts, and the provisions are not so vague or amorphous as to be beyond the competence of the courts to enforce.<sup>4</sup> However, another court held that the Act did not create rights enforceable by foster children in the care of a state under [42 U.S.C.A. § 1983](#), as the funds received by the state under the Act were used entirely for the administration of the child welfare program and provided no substantive benefits to foster children, the requirements of incentive funds under the statute simply expressed a congressional preference rather than imposing an obligation on the state, and the pertinent statutory provisions of the Act alleged to create the rights were so vague as to evade enforcement by the courts.<sup>5</sup>

The provisions of the Act dealing with child welfare services and foster care and adoption assistance<sup>6</sup> do not require fair hearings for service-related issues as opposed to when monetary issues are at stake.<sup>7</sup>

### CUMULATIVE SUPPLEMENT

**Cases:**

Aspirational statutory, regulatory, and private standards for child welfare were not substantive due process requirements for state's duties for safety and general well-being of foster children in custody of Massachusetts Department of Children and Families (DCF). [U.S.C.A. Const.Amend. 14](#); [45 C.F.R. § 1355.10 et seq.](#) [Connor B. ex rel. Vigurs v. Patrick](#), 774 F.3d 45 (1st Cir. 2014).

**[END OF SUPPLEMENT]**

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**Footnotes**

- 1 [42 U.S.C.A. § 622\(b\)\(8\)\(A\)\(ii\).](#)
- 2 [42 U.S.C.A. § 622\(b\)\(7\).](#)
- 3 [Marisol A. by Forbes v. Giuliani](#), 929 F. Supp. 662, 17 A.D.D. 114 (S.D. N.Y. 1996), order aff'd, 126 F.3d 372, 38 Fed. R. Serv. 3d 1454 (2d Cir. 1997) (enforcing [§ 622\(b\)\(9\)](#)); [Brian A. ex rel. Brooks v. Sundquist](#), 149 F. Supp. 2d 941 (M.D. Tenn. 2000) (enforcing [§ 622\(b\)\(10\)\(B\)\(ii\)](#)).
- 4 [Brian A. ex rel. Brooks v. Sundquist](#), 149 F. Supp. 2d 941 (M.D. Tenn. 2000).
- 5 [Del A. v. Roemer](#), 777 F. Supp. 1297 (E.D. La. 1991).
- 6 [42 U.S.C.A. §§ 621 to 628, 670 to 676.](#)
- 7 [Ward v. Keller](#), 774 F. Supp. 439 (S.D. Ohio 1991).

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## 79 Am. Jur. 2d Welfare § 23

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### Welfare Laws

Eric C. Surette, J.D.

## II. Federally Assisted Programs

### B. Particular Programs

#### 1. Programs for Families and Children


##### c. Other Community Service Programs for Children

## § 23. Head start programs

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Public Assistance](#)  104, 105

West's Key Number Digest, [United States](#)  82(2)

### Treatises and Practice Aids

[Federal Procedure, L. Ed. §§ 42:1078 to 42:1136](#)

It is the purpose of the Head Start Program<sup>1</sup> to promote the school readiness of low-income children by enhancing their cognitive, social, and emotional development in a learning environment that supports children's growth in language, literacy, mathematics, science, social and emotional functioning, creative arts, physical skills, and approaches to learning; and through the provision to low-income children and their families of health, educational, nutritional, social, and other services that are determined, based on family needs assessments, to be necessary.<sup>2</sup> The Secretary of Health and Human Services may, upon application by an agency which is eligible for designation as a Head Start agency, provide financial assistance to such agency for the planning, conduct, administration, and evaluation of a Head Start Program focused primarily upon children from low-income families who have not reached the age of compulsory school attendance which (1) will provide such comprehensive health, education, parental involvement, nutritional, social, and other services as will enable the children to attain their full potential and attain school readiness; and (2) will provide for direct participation of the parents of such children in the development, conduct, and overall program direction at the local level.<sup>3</sup>

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Footnotes

- 1 [42 U.S.C.A. §§ 9831 to 9852c.](#)
- 2 [42 U.S.C.A. § 9831.](#)
- 3 [42 U.S.C.A. § 9833.](#)

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## 79 Am. Jur. 2d Welfare § 24

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### Welfare Laws

Eric C. Surette, J.D.

## II. Federally Assisted Programs

### B. Particular Programs

#### 1. Programs for Families and Children

##### c. Other Community Service Programs for Children

## § 24. Child care and development block grant

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Public Assistance](#)  104, 105

West's Key Number Digest, [United States](#)  82(2)

### Treatises and Practice Aids

[Federal Procedure, L. Ed. §§ 42:1046 to 42:1077](#)

In general terms, the Child Care and Development Block Grant Act of 1990<sup>1</sup> provides block grants to the states<sup>2</sup> with which the states provide assistance to families to obtain child care services pursuant to a plan for providing such assistance.<sup>3</sup> The goals of the Child Care and Development Block Grant Program are:

- (1) to allow each state maximum flexibility in developing child care programs and policies that best suit the needs of children and parents within such state;
- (2) to promote parental choice to empower working parents to make their own decisions on the child care that best suits their family's needs;
- (3) to encourage states to provide consumer education information to help parents make informed choices about child care;

(4) to assist states to provide child care to parents trying to achieve independence from public assistance; and

(5) to assist states in implementing the health, safety, licensing, and registration standards established in state regulations.<sup>4</sup> The State is required to use grant funds for child care services on a sliding fee scale basis, activities that improve the quality or availability of such services, and any other activity that the State deems appropriate to realize any of the goals of the Child Care and Development Block Grant Program, with priority being given for services provided to children of families with very low family incomes and to children with special needs.<sup>5</sup> A state is required to demonstrate the manner in which the state will meet the specific child care needs of families who are receiving assistance under a State TANF Program, families who are attempting through work activities to transition off of such assistance program, and families that are at risk of becoming dependent on such assistance program.<sup>6</sup> In addition to the families stated above, a state is required to ensure that a substantial portion of the grant funds available to the state to carry out activities under the Child Care and Development Block Grant Program in each fiscal year is used to provide assistance to low-income working families other than those receiving assistance under a State TANF Program.<sup>7</sup>

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#### Footnotes

- |   |                                     |
|---|-------------------------------------|
| 1 | 42 U.S.C.A. §§ 9858 to 9858q.       |
| 2 | 42 U.S.C.A. § 9858a.                |
| 3 | 42 U.S.C.A. § 9858c.                |
| 4 | 42 U.S.C.A. § 9858, note.           |
| 5 | 42 U.S.C.A. § 9858c(c)(3)(B).       |
| 6 | 42 U.S.C.A. § 9858c(c)(2)(H).       |
|   | As to TANF Program, see §§ 8 to 10. |
| 7 | 42 U.S.C.A. § 9858c(c)(3)(D).       |

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## 79 Am. Jur. 2d Welfare § 25

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### Welfare Laws

Eric C. Surette, J.D.

## II. Federally Assisted Programs

### B. Particular Programs

#### 1. Programs for Families and Children


##### c. Other Community Service Programs for Children

## § 25. Child care safety and health grants

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Public Assistance](#)  104, 105

West's Key Number Digest, [United States](#)  82(2)

Under the Child Care Safety and Health Grants Program,<sup>1</sup> the Secretary of Health and Human Services is required to make allotments to enable the states to establish programs to improve the health and safety of children receiving child care outside the home, by preventing illnesses and injuries associated with that care, and promoting the health and well-being of children receiving that care.<sup>2</sup> A state that receives an allotment is required to use the funds to carry out activities specifically set forth in the statutes authorizing the program.<sup>3</sup> It is expressly provided that grant funds must be used to supplement and not supplant other federal, state, and local public funds expended to provide services for eligible individuals.<sup>4</sup>

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### Footnotes

- <sup>1</sup> 42 U.S.C.A. §§ 9859 to 9859f.
- <sup>2</sup> 42 U.S.C.A. § 9859b.
- <sup>3</sup> 42 U.S.C.A. § 9859e(a).
- <sup>4</sup> 42 U.S.C.A. § 9859e(b).

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## 79 Am. Jur. 2d Welfare § 26

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### Welfare Laws

Eric C. Surette, J.D.

## II. Federally Assisted Programs

### B. Particular Programs

#### 1. Programs for Families and Children

##### c. Other Community Service Programs for Children

## § 26. Grants to states for planning and development of dependent care programs and for other purposes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Public Assistance](#) 🔑 104, 105

West's Key Number Digest, [United States](#) 🔑 82(2)

### Treatises and Practice Aids

[Federal Procedure, L. Ed. §§ 42:1044, 42:1045](#)

Statutes provide for grants to states for the planning and development of dependent care programs and for other purposes.<sup>1</sup> Subject to certain limitations, funds paid to a state may be used for the planning, development, establishment, operation, expansion, or improvement by the states, directly or by grant or contract with public or private entities, of state and local resource and referral systems to provide information concerning the availability, types, costs, and locations of dependent care services,<sup>2</sup> and for the planning, development, establishment, operation, expansion, or improvement by the states, directly, or by grant or contract, with public agencies or private nonprofit organizations of programs to furnish school-age child care services before and after school.<sup>3</sup> A state is required to make application for such funds, and an application must contain certain specified certifications and describe the intended uses for such grant funds.<sup>4</sup>

Footnotes

- 1 42 U.S.C.A. §§ 9871 to 9877.
- 2 42 U.S.C.A. § 9874(a)(1).
- 3 42 U.S.C.A. § 9874(b)(1).
- 4 42 U.S.C.A. § 9875.

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## 79 Am. Jur. 2d Welfare § 27

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### Welfare Laws

Eric C. Surette, J.D.

## II. Federally Assisted Programs

### B. Particular Programs

#### 2. Food Programs

##### a. Supplemental Nutrition Assistance (Food Stamp) Program

## § 27. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Public Assistance](#)  150 to 163

### A.L.R. Library

[Eligibility of Aliens for Food Assistance Benefits Under Federal Constitutional or Statutory Provisions, 89 A.L.R. Fed. 2d 1](#)

[Eligibility of Aliens for Food Assistance Benefits Under Federal Constitutional or Statutory Provisions, 89 A.L.R. Fed. 2d 1](#)

[Eligibility for food stamps under Food Stamp Act of 1964 \(7 U.S.C.A. secs. 2011 et seq.\), 118 A.L.R. Fed. 473](#)

[What constitutes income, under 7 U.S.C.A. sec. 2014\(d\), \(k\), for purposes of determining eligibility for food stamps, 102 A.L.R. Fed. 160](#)

### Treatises and Practice Aids

[Federal Procedure, L. Ed. §§ 42:812 to 42:1003](#)

**Forms**

[Federal Procedural Forms §§ 37:13 to 37:19](#) (Supplemental nutrition assistance program)

Under the current provisions of the Federal Food Stamp Act,<sup>1</sup> the Secretary of Agriculture is authorized to formulate and administer a supplemental nutrition assistance program under which, at the request of a state agency, eligible households within that state shall be provided with an opportunity to obtain a more nutritious diet through the issuance to such families of an allotment.<sup>2</sup> The supplemental nutrition assistance program is designed to promote the general welfare and to safeguard the health and well being of the nation's population by raising the levels of nutrition among low-income households.<sup>3</sup> Benefits issued and used under the supplemental nutrition assistance program are redeemable at face value by the Secretary through the facilities of the Treasury of the United States.<sup>4</sup> The benefits received by households under the supplemental nutrition assistance program must be used only to purchase food from retail food stores which have been approved for participation in the supplemental nutrition assistance program.<sup>5</sup> A state may not participate in the supplemental nutrition assistance program if the Secretary determines that state or local sales taxes are collected within that state on purchases of food made with benefits issued under the supplemental nutrition assistance program.<sup>6</sup>

The value of the allotment which state agencies are authorized to issue to any households certified as eligible to participate in the supplemental nutrition assistance program must be equal to the cost to such households of the "thrifty food plan" reduced by an amount equal to 30% of the household's income.<sup>7</sup> A "thrifty food plan" is the diet required to feed a family of four persons consisting of a man and a woman 20 through 50, a child six through eight, and a child nine through 11 years of age, determined in accordance with the Secretary's calculations.<sup>8</sup>

A state may elect to carry out a simplified food stamp program as provided for in the Act.<sup>9</sup>

**CUMULATIVE SUPPLEMENT**

**Statutes:**

[7 C.F.R. § 284.1](#), as added effective November 4, 2020, establishes the retailer integrity regulations for Pandemic Electronic Benefits Transfer (P-EBT) benefits as well as supplemental nutrition assistance program (SNAP) benefits for retailers in any state.

**[END OF SUPPLEMENT]**

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**Footnotes**

<sup>1</sup> [7 U.S.C.A. §§ 2011 to 2036a](#).

The Food Stamp Act of 1964 was repealed by the enactment of the Food Stamp Act Amendments of 1982.  
[Williams v. Atkins, 786 F.2d 457 \(1st Cir. 1986\).](#)

2 [7 U.S.C.A. § 2013\(a\).](#)

As to the National School Lunch Act and the Child Nutrition Act, see [Am. Jur. 2d, Schools §§ 360 to 365.](#)

3 [7 C.F.R. § 271.1.](#)

4 [7 U.S.C.A. § 2013\(a\).](#)

5 [7 U.S.C.A. § 2013\(a\).](#)

6 [7 U.S.C.A. § 2013\(a\).](#)

7 [7 U.S.C.A. § 2017\(a\).](#)

8 [7 U.S.C.A. § 2012\(u\).](#)

9 [7 U.S.C.A. § 2035.](#)

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## 79 Am. Jur. 2d Welfare § 28

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### Welfare Laws

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## II. Federally Assisted Programs

### B. Particular Programs

#### 2. Food Programs

##### a. Supplemental Nutrition Assistance (Food Stamp) Program

## § 28. Administration of program

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 3541, 3542

West's Key Number Digest, [Public Assistance](#) 16, 19, 26, 27, 156, 157

### A.L.R. Library

[Validity of statutes or regulations denying welfare benefits to claimants who transfer property for less than its full value, 24 A.L.R.4th 215](#)

[Eligibility of Aliens for Food Assistance Benefits Under Federal Constitutional or Statutory Provisions, 89 A.L.R. Fed. 2d 1](#)

[Violations and enforcement of Food Stamp Act of 1964 \(7 U.S.C.A. secs. 2011 et seq.\), 120 A.L.R. Fed. 331](#)

[Eligibility for food stamps under Food Stamp Act of 1964 \(7 U.S.C.A. secs. 2011 et seq.\), 118 A.L.R. Fed. 473](#)

[Liability of state or federal government for losses associated with distribution of food stamps, 116 A.L.R. Fed. 457](#)

### Treatises and Practice Aids

[Federal Procedure, L. Ed. §§ 42:815 to 42:822](#)

## Forms

[Am. Jur. Pleading and Practice Forms, Welfare Laws § 8](#) (Complaint—Federal court—Class action—For declaratory and injunctive relief—Failure to provide assistance to food stamp recipients in emergency situations)

[Federal Procedural Forms § 37:15](#) (Administration of Supplemental Nutrition Assistance Program)

[Federal Procedural Forms §§ 37:26 to 37:33](#) (Procedural forms—Food stamp recipients)

The Secretary of Agriculture is directed to issue regulations appropriate for the efficient administration of the supplemental nutrition assistance program.<sup>1</sup> Although the federal government establishes the regulatory framework and funds the supplemental nutrition assistance program, responsibility for administering the program lies primarily with state agencies.<sup>2</sup> States must adhere to federal standards when implementing supplemental nutrition assistance programs.<sup>3</sup>

The state agency of each participating state has responsibility for certifying applicant households and issuing electronic benefit transfer cards,<sup>4</sup> and for the submission for approval of a state plan of operation.<sup>5</sup> The Federal Food Stamp Act provides for the requisites of a state plan of operation.<sup>6</sup> The basic components of the State Plan of Operation are the Federal/State Agreement, the Budget Projection Statement, and the Program Activity Statement.<sup>7</sup> The Federal/State Agreement is the legal agreement between the State and the Department of Agriculture.<sup>8</sup> This Agreement is the means by which a state elects to operate the Supplemental Nutrition Assistance Program and to administer the program in accordance with the Food Stamp Act, applicable regulations, and the approved state plan of operation.<sup>9</sup> The Budget Projection Statement and Program Activity Statement provide information on the number of actions and amounts budgeted for various functional areas such as certification and issuance.<sup>10</sup>

No plan of operation submitted by a state agency will be approved unless the standards of eligibility meet those established by the Secretary, and no state agency may impose any other standards of eligibility as a condition for participating in the program.<sup>11</sup>

The implementation of a state program authorizing a fixed allocation of food stamps to group-home residents violated the Equal Protection Clauses of the United States and state constitutions where the State did not have a rational basis for providing higher allotments of food stamps to similarly situated recipients of public assistance than to recipients of Supplemental Security Income (SSI).<sup>12</sup>

## CUMULATIVE SUPPLEMENT

### Statutes:

7 C.F.R. Pt. 271 ([7 C.F.R. §§ 271.1 to 271.8](#)) was amended effective March 25, 2013, by removing all references to "food stamp program" or "FSP" and adding in their place the term "a supplemental nutrition assistance program" or "SNAP"; in addition, references to the "Food Stamp Act of 1977" were removed and references to the "Food and Nutrition Act of 2008" were added in their place.

**Cases:**

States, District of Columbia, city, and private plaintiffs were not likely to succeed on merits of their claim that provision of United States Department of Agriculture's (USDA) final rule limiting to preceding fiscal year states' ability to carry unused previously accumulated discretionary exemptions from work requirements on which receipt of food assistance from Supplemental Nutrition Assistance Program (SNAP) could be conditioned, and thus were not entitled to preliminary injunction barring application of final rule, even though states were previously permitted to carryover indefinitely any unused exemptions; statute was ambiguous on issue of whether number of exemptions estimated for the preceding fiscal year should include exemptions carried over from years prior to preceding fiscal year, and USDA's interpretation of statute was not unreasonable. Food and Nutrition Act of 2008 § 6, [7 U.S.C.A. § 2015\(o\)\(6\)\(G\)](#); [7 C.F.R. § 273.24\(h\)\(2\)](#). [District of Columbia v. U.S. Department of Agriculture](#), 444 F. Supp. 3d 1 (D.D.C. 2020).

**[END OF SUPPLEMENT]**

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**Footnotes**

- 1 [7 U.S.C.A. § 2013\(c\)](#).  
The supplemental nutrition assistance program is found at 7 C.F.R. Pts. 271 to 285.
- 2 [Wheaton v. Department of Health and Human Services](#), 2008 ME 48, 943 A.2d 568 (Me. 2008).
- 3 [Christopher v. Montgomery County Dept. of Health and Human Services](#), 381 Md. 188, 849 A.2d 46 (2004).  
There is a role for state law in the administration of the food stamp program as long as it does not conflict with federal law. [Allen v. State, Dept. of Health & Social Services, Div. of Public Assistance](#), 203 P.3d 1155 (Alaska 2009).
- 4 [7 U.S.C.A. § 2020\(a\)](#).
- 5 [7 U.S.C.A. § 2020\(d\)](#).
- 6 [7 U.S.C.A. § 2020\(e\)](#).
- 7 [7 C.F.R. § 272.2\(a\)\(2\)](#).
- 8 [7 C.F.R. § 272.2\(a\)\(2\)](#).
- 9 [7 C.F.R. § 272.2\(a\)\(2\)](#).
- 10 [7 C.F.R. § 272.2\(a\)\(2\)](#).
- 11 [7 U.S.C.A. § 2014\(b\)](#).  
As to standards of eligibility, see § 29.
- 12 [Graves v. Doar](#), 87 A.D.3d 740, 928 N.Y.S.2d 774 (2d Dep't 2011).

## 79 Am. Jur. 2d Welfare § 29

American Jurisprudence, Second Edition | May 2021 Update

Welfare Laws

Eric C. Surette, J.D.

### II. Federally Assisted Programs

#### B. Particular Programs

##### 2. Food Programs

###### a. Supplemental Nutrition Assistance (Food Stamp) Program

## § 29. Administration of program—Eligibility; calculation of income

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 3541, 3542

West's Key Number Digest, [Public Assistance](#) 153, 154

### A.L.R. Library

[Eligibility of Aliens for Food Assistance Benefits Under Federal Constitutional or Statutory Provisions](#), 89 A.L.R. Fed. 2d 1

[Eligibility for food stamps under Food Stamp Act of 1964 \(7 U.S.C.A. secs. 2011 et seq.\)](#), 118 A.L.R. Fed. 473

[What constitutes income, under 7 U.S.C.A. sec. 2014\(d\), \(k\), for purposes of determining eligibility for food stamps](#), 102 A.L.R. Fed. 160

### Treatises and Practice Aids

[Federal Procedure](#), L. Ed. §§ 42:957 to 42:984

## Forms

[Am. Jur. Pleading and Practice Forms, Welfare Laws § 9](#) (Petition or application—For writ of mandamus—To enforce applicant's right to food stamps)

[Am. Jur. Pleading and Practice Forms, Welfare Laws § 15](#) (Complaint—Allegation—Failure to timely determine food stamp eligibility)

[Am. Jur. Pleading and Practice Forms, Welfare Laws § 19](#) (Answer—Defense—By welfare department—Termination of family member from family-controlled business as ruse to qualify for food stamps)

[Am. Jur. Pleading and Practice Forms, Welfare Laws §§ 20 to 22](#) (Answer—Defense—By welfare department—Termination of food stamp eligibility)

[Federal Procedural Forms §§ 37:17 to 37:19](#) (Suits by supplemental nutrition assistance program claimants)

[Federal Procedural Forms § 37:27](#) (Allegations in complaint—Failure to timely determine Supplemental Nutrition Assistance Program eligibility)

Participation of households in the supplemental nutrition assistance program is limited to those whose income and other financial resources are determined to be substantially limiting factors in permitting them to obtain a more nutritious diet.<sup>1</sup> Within certain limitations, households in which each member receives benefits under a state program funded under Part A of Title IV of the Social Security Act (TANF Program),<sup>2</sup> supplemental security income benefits under Title XVI of the Social Security Act,<sup>3</sup> or aid to the aged, blind, or disabled under Title I, X, XIV, or XVI of the Social Security Act,<sup>4</sup> are eligible to participate in the supplemental nutrition assistance program.<sup>5</sup> Further, subject to specified exceptions, households in which each member receives benefits under a state or local general assistance program that complies with standards established by the Secretary of Agriculture for ensuring that the program is based on income criteria comparable to or more restrictive than those under the Act's gross income standard<sup>6</sup> and not limited to one-time emergency payments that cannot be provided for more than one consecutive month are eligible to participate in the supplemental nutrition assistance program.<sup>7</sup>

The Food Stamp Act contains methods and formulas for determining income eligibility.<sup>8</sup> With certain exceptions, the Secretary is required to establish uniform national standards of eligibility for participation by households in the supplemental nutrition assistance program in accordance with the provisions of the Act.<sup>9</sup> Regulations of the Secretary defining income for purpose of the supplemental nutrition assistance program have been found to be reasonably adopted by the Secretary in the performance of the Secretary's duty to formulate and administer a supplemental nutrition assistance program and are within the Secretary's statutory authority.<sup>10</sup>

Eligibility for supplemental nutrition assistance program benefits are largely determined by a household's income.<sup>11</sup> As a general rule, a recipient's benefits decreases when his or her income increases.<sup>12</sup> Although "[h]ousehold income for purposes of the supplemental nutrition assistance program shall include all income from whatever source,"<sup>13</sup> certain exclusions (regarding incoming revenue) and deductions (regarding expenses) apply.<sup>14</sup> Deductions serve to account for many of the applicant's necessary expenses, thus reducing the applicant's total income calculation and increasing the amount of food stamps for which his or her household is eligible.<sup>15</sup>

**Observation:**

A disabled child's private school tuition, transportation to school, and cellular telephone service were not allowable excess medical expenses that could be deducted from the mother's income, for purposes of determining eligibility for food stamps.<sup>16</sup>

Assistance under the supplemental nutrition assistance program must be furnished to all eligible households who make application for such participation.<sup>17</sup> Supplemental nutrition assistance benefits are a matter of statutory entitlement for persons qualified to receive them, and thus are appropriately treated as a form of "property" protected by due process, and accordingly, procedures that are employed in determining whether an individual may continue to participate in the statutory program must comply with the commands of the Constitution.<sup>18</sup> However, a welfare recipient is not deprived of due process when the legislature adjusts benefit levels as a legislative determination provides all process that is due.<sup>19</sup> Further, a supplemental nutrition assistance recipient whose certification has expired and who has been found ineligible for recertification does not have a property interest in, and constitutional right to, continuation of supplemental nutrition assistance benefits pending a hearing to contest an adverse eligibility determination.<sup>20</sup>

**Observation:**

Where the recipient has a brutal need for the benefit at issue, as is the case with food stamps, courts have traditionally required that agencies go to greater lengths, incurring higher costs and accepting inconveniences, to reduce the risk of error in denying benefits. In the context of notice, such effort might amount to erring on the side of providing too much detail respecting the basis for an agency's decision rather than too little.<sup>21</sup>

An individual convicted of certain drug-related felonies is permanently ineligible for benefits under the federal supplemental nutrition assistance program.<sup>22</sup> This provision has survived an equal protection challenge, as there is a rational connection between the disqualification of drug felons from eligibility for food stamps, as it was not irrational for Congress to conclude that the disqualification of drug felons from receiving aid under the Food Stamp Program would deter drug use among the population eligible to receive that aid.<sup>23</sup>

**CUMULATIVE SUPPLEMENT**

**Cases:**

Child support directly received by mother who was a single parent raising five children under the age of 22 was household income for purposes of determining eligibility of household for federal Supplemental Nutrition Assistance Program (SNAP), commonly referred to as food stamps, even if child support was used for benefit of two children who were ineligible college students living at home, where support was paid directly to mother and she had discretion over it. [7 C.F.R. §§ 273.5\(d\), 273.11\(d\)](#); [N.Y. Comp. Codes R. & Regs. tit. 18, § 387.1\(x\)\(4\)](#). [Leggio v. Devine](#), 34 N.Y.3d 448, 121 N.Y.S.3d 206, 143 N.E.3d 1084 (2020).

**[END OF SUPPLEMENT]**

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**Footnotes**

- 1 [7 U.S.C.A. § 2014\(a\)](#).
- 2 [42 U.S.C.A. §§ 601 to 619](#).  
As to the TANF Program, see [§§ 8 to 10](#).
- 3 [42 U.S.C.A. §§ 1381 et seq.](#)  
As to Social Security, generally, see [Am. Jur. 2d, Social Security and Medicare §§ 1 et seq.](#)
- 4 [42 U.S.C.A. §§ 301 et seq., 1201 et seq., 1351 et seq., 1381 et seq.](#)  
As to Social Security, generally, see [Am. Jur. 2d, Social Security and Medicare §§ 1 et seq.](#)
- 5 [7 U.S.C.A. § 2014\(a\)](#).
- 6 [7 U.S.C.A. § 2014\(c\)\(2\)](#).
- 7 [7 U.S.C.A. § 2014\(a\)](#).
- 8 [7 U.S.C.A. § 2014](#).
- 9 [7 U.S.C.A. § 2014\(b\)](#).
- 10 [Knebel v. Hein](#), 429 U.S. 288, 97 S. Ct. 549, 50 L. Ed. 2d 485 (1977).
- 11 [Christopher v. Montgomery County Dept. of Health and Human Services](#), 381 Md. 188, 849 A.2d 46 (2004).
- 12 [Christopher v. Montgomery County Dept. of Health and Human Services](#), 381 Md. 188, 849 A.2d 46 (2004).
- 13 [7 U.S.C.A. § 2014\(d\)](#).
- 14 [Christopher v. Montgomery County Dept. of Health and Human Services](#), 381 Md. 188, 849 A.2d 46 (2004).
- 15 [Christopher v. Montgomery County Dept. of Health and Human Services](#), 381 Md. 188, 849 A.2d 46 (2004).  
In determining a recipient's continued eligibility for Supplemental Nutrition Assistance Program benefits for the next certification period, the recipient's one-time expense of buying a work truck during the current year could not be deducted when calculating the recipient's anticipated income from self-employment for following year as the recipient paid for truck in full at the time of purchase. [Ennis v. North Dakota Dept. of Human Services](#), 2012 ND 185, 820 N.W.2d 714 (N.D. 2012).
- 16 [In re Kalar](#), 162 N.H. 314, 27 A.3d 756 (2011).
- 17 [7 U.S.C.A. § 2014\(a\)](#).
- 18 [Atkins v. Parker](#), 472 U.S. 115, 105 S. Ct. 2520, 86 L. Ed. 2d 81 (1985).
- 19 [Atkins v. Parker](#), 472 U.S. 115, 105 S. Ct. 2520, 86 L. Ed. 2d 81 (1985).
- 20 [Banks v. Block](#), 700 F.2d 292 (6th Cir. 1983).
- 21 [Allen v. State, Dept. of Health & Social Services, Div. of Public Assistance](#), 203 P.3d 1155 (Alaska 2009).
- 22 [21 U.S.C.A. § 862a\(a\)\(2\)](#).
- 23 [Turner v. Glickman](#), 207 F.3d 419 (7th Cir. 2000).

## 79 Am. Jur. 2d Welfare § 30

American Jurisprudence, Second Edition | May 2021 Update

Welfare Laws

Eric C. Surette, J.D.

### II. Federally Assisted Programs

#### B. Particular Programs


##### 2. Food Programs

###### a. Supplemental Nutrition Assistance (Food Stamp) Program

## § 30. Selection of participating establishments

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Public Assistance](#)  155

### A.L.R. Library

[Selection and suspension or disqualification of participating stores under Food Stamp Act of 1964 \(7 U.S.C.A. secs. 2011 et seq.\), 121 A.L.R. Fed. 653](#)

[Violations and enforcement of Food Stamp Act of 1964 \(7 U.S.C.A. secs. 2011 et seq.\), 120 A.L.R. Fed. 331](#)

### Treatises and Practice Aids

[Federal Procedure, L. Ed. §§ 42:929 to 42:932](#)

### Forms



[Am. Jur. Legal Forms 2d § 264:8](#) (USDA food stamp—supplemental nutrition assistance program—Application for meal services—FNS Form 252-2)

[Am. Jur. Pleading and Practice Forms, Welfare Laws § 6](#) (Complaint in federal court—Action by retail store owner to review adverse administrative decision under federal food stamp program—Denial of eligibility)

[Federal Procedural Forms § 37:34](#) (Supplemental Nutrition Assistance Program application—For stores (Form FNS-252))

[Federal Procedural Forms § 37:35](#) (Application for authorization to participate in Supplemental Nutrition Assistance Program—For communal dining facilities, drug addiction or alcoholic treatment and rehabilitation programs, meal delivery services and group living arrangements (Form FNS-252-2))

[Federal Procedural Forms § 37:36](#) (Notice of denial—Of application to participate in food stamp program)

[Federal Procedural Forms §§ 37:38 to 37:40](#) (Request for review—Of adverse action)

[Federal Procedural Forms §§ 37:43, 37:44](#) (Complaint—In district court—For judicial review of administrative decision—Denial of approval to participate in Supplemental Nutrition Assistance Program)

The Food Stamp Act provides for the submission of applications by retail food stores and wholesale food concerns for approval of their participation in the acceptance and redemption of benefits under the supplemental nutrition assistance program.<sup>1</sup>

Regulations have been issued concerning submission of applications by retail food stores and wholesale food concerns.<sup>2</sup> Provision is made for the redemption of benefits accepted by retail food stores only through approved wholesale food concerns or through specified financial institutions.<sup>3</sup>

The benefits received by eligible households may be used only to purchase food from retail food stores which have been approved for participation in the supplemental nutrition assistance program.<sup>4</sup>

## CUMULATIVE SUPPLEMENT

### Statutes:

16 U.S.C.A. § 2018(a)(1)(iv), as added effective December 20, 2018, provides that factors include any information, if available, about the ability of the anticipated or existing electronic benefit transfer equipment and service provider of the applicant to provide sufficient information through the electronic benefit transfer system to minimize the risk of fraudulent transactions.

### [END OF SUPPLEMENT]

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### Footnotes

- <sup>1</sup> [7 U.S.C.A. § 2018\(a\).](#)
- <sup>2</sup> [7 C.F.R. Pt. 278.](#)
- <sup>3</sup> [7 U.S.C.A. § 2019.](#)
- <sup>4</sup> [7 U.S.C.A. § 2013\(a\).](#)

## 79 Am. Jur. 2d Welfare § 31

American Jurisprudence, Second Edition | May 2021 Update

Welfare Laws

Eric C. Surette, J.D.

### II. Federally Assisted Programs

#### B. Particular Programs

##### 2. Food Programs

###### a. Supplemental Nutrition Assistance (Food Stamp) Program

## § 31. Selection of participating establishments—Disqualification or civil penalty

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Public Assistance](#)  155, 163

### A.L.R. Library

[Selection and suspension or disqualification of participating stores under Food Stamp Act of 1964 \(7 U.S.C.A. secs. 2011 et seq.\), 121 A.L.R. Fed. 653](#)

[Violations and enforcement of Food Stamp Act of 1964 \(7 U.S.C.A. secs. 2011 et seq.\), 120 A.L.R. Fed. 331](#)

### Treatises and Practice Aids

[Federal Procedure, L. Ed. §§ 42:933 to 42:956](#)

### Trial Strategy

Proof that Food Stamp License Holder's License was Improperly Revoked, 53 Am. Jur. Proof of Facts 3d 301

## Forms

[Am. Jur. Pleading and Practice Forms, Welfare Laws § 4, 7](#) (Complaint in federal court—Action by retail storeowner to review adverse administrative decision under federal food stamp program—Withdrawal of authorization to participate in program)

[Am. Jur. Pleading and Practice Forms, Welfare Laws § 5](#) (Complaint in federal court—For judicial review of administrative decision—Disqualification of retail food store owner from participation in food stamp program for specified period—Sale of ineligible items)

[Am. Jur. Pleading and Practice Forms, Welfare Laws § 27](#) (Answer—Defense—Retail store owner properly disqualified from participation in food stamp program and not eligible for alternative monetary fine)

[Am. Jur. Pleading and Practice Forms, Welfare Laws § 30](#) (Affidavit—By attorney—In support of motion for temporary restraining order—To restrain agency from enforcing withdrawal of authorization to accept food stamps)

[Federal Procedural Forms § 37:41](#) (Determination of designated reviewer—Withdrawal of authorization to participate in Supplemental Nutrition Assistance Program)

[Federal Procedural Forms § 37:42](#) (Complaint—In district court—For judicial review of administrative decision—Withdrawal of authorization to participate in Supplemental Nutrition Assistance Program)

[Federal Procedural Forms § 37:45](#) (Complaint in district court—For judicial review of administrative decision—Disqualification from participation in Supplemental Nutrition Assistance Program—Sale of ineligible items)

[Federal Procedural Forms § 37:46](#) (Defense in answer—Retail store owner properly disqualified from participation in Supplemental Nutrition Assistance Program and not eligible for civil monetary fine)

[Federal Procedural Forms § 37:47](#) (Motion—For temporary restraining order—Restraining Food and Nutrition Service from enforcing withdrawal of authorization to accept Supplemental Nutrition Assistance Program benefits)

An approved retail food store or wholesale food concern that violates a statutory provision or a regulation governing the supplemental nutrition assistance program may be disqualified for a specified period of time from further participation in the supplemental nutrition assistance program, assessed a civil money penalty of up to a specified amount for each violation, or both.<sup>1</sup> Regulations issued pursuant to the Food Stamp Act are required to provide criteria for the finding of a violation of, the suspension or disqualification of, and the assessment of a civil penalty against a retail food store or wholesale food concern on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, or evidence obtained through a transaction report under an electronic benefit transfer system.<sup>2</sup>

Due process does not require de novo review of the Secretary's choice of a sanction imposed against a retailer found in violation of the Food Stamp Act as the procedures provided in the Act<sup>3</sup> adequately protect a violator's due process interests where the violator is provided an opportunity to present evidence on the violation and sanction to the agency and then is accorded a de novo review by a court of a finding of the violation and limited review of the choice of sanction.<sup>4</sup> A civil monetary penalty in lieu of permanent disqualification from the supplemental nutrition assistance program, available to innocent store owners whose employees are trafficking in food stamps, is a quasi-criminal sanction which must be based on an ability to pay, the burden imposed by the fine, and the loss inflicted upon others.<sup>5</sup> A store owner whose employee exchanged cash for food stamp coupons was entitled to an alternative monetary sanction in lieu of permanent disqualification from the program given that the owner was neither aware of nor benefited from the program violations and had a comprehensive compliance policy and

employee training program in place before the violations occurred.<sup>6</sup> The United States Department of Agriculture, Food and Consumer Service (FCS) may impose the sanction of either permanent disqualification from the federal food stamp program or a civil money penalty on an innocent store owner for food stamp trafficking by employees.<sup>7</sup> If such a store owner does not request that the FCS consider imposing a civil money penalty in lieu of permanent disqualification, the FCS is required to impose permanent disqualification.<sup>8</sup>

A six-month disqualification from participation in the Food Stamp Program was a reasonable sanction for a supermarket's violations of the Food Stamp Act as even though the supermarket did not receive a written warning letter prior to disqualification, the regulations under the Act did not require such written notice, the supermarket committed clear violations by accepting food stamps for ineligible nonfood items, the employees who committed the violations were not terminated, and the supermarket owner failed to provide evidence that he adequately trained his employees to follow the regulations.<sup>9</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Supermarket failed to refute unusually large electronic benefits transfer (EBT) card transactions as evidence of Supplemental Nutrition Assistance Program (SNAP) trafficking, upon which Food and Nutrition Service (FNS) based its decision to disqualify supermarket from participation in SNAP; the government found that comparing supermarket's transaction data with that of other similar stores that sold Halal meats revealed that, during the relevant months, supermarket's customers spent more than double per transaction than shoppers at any other store, and supermarket's sales were over 300% of average purchase amounts at medium grocery stores, whereas supermarket merely asserted that store comparisons were inappropriate, without suggesting appropriate alternative stores for comparison. 5 U.S.C. § 500 et seq.; Food and Nutrition Act of 2008 §§ 12, 14, 7 U.S.C.A. §§ 2021(a), 2021(b)(3)(B), 2023, 2023(a)(13), 2023(a)(15); 7 C.F.R. § 278.6(a); Fed. R. Civ. P. 56(a). *Cheema v. United States*, 365 F. Supp. 3d 172 (D. Mass. 2019).

Grocer's proffered explanations for irregularities in its electronic benefit transfer (EBT) transactions under the Supplemental Nutrition Assistance Program (SNAP), in which it explained that its transactions ended in the same cents value because it rounded transactions down to the nearest dollar to create goodwill and that its customers made large purchases in short periods of time because of their low-paying, hourly jobs, were insufficient to refute Food and Nutrition Service's (FNS) trafficking charges against grocer, where transactions amounting to \$50 or more ended in a zero cents value 69% of the time, whereas transactions under \$50 only ended in a zero cents value 23% of the time, and proffered explanation did not explain why beneficiaries would make multiple large purchases within small time frame at a small store that lacked shopping carts, optical scanners, or counter space to accommodate large purchases. Food and Nutrition Act of 2008 § 2 et seq., 7 U.S.C.A. § 2011 et seq.; 7 C.F.R. § 278.6(i). *SS Grocery, Inc. v. U.S. Department of Agriculture, Food and Nutrition Service*, 340 F. Supp. 3d 172 (E.D. N.Y. 2018).

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### Footnotes

- 1 7 U.S.C.A. § 2021(a).
- 2 7 U.S.C.A. § 2021(a)(2).  
Regulations have been issued concerning disqualification or civil penalties. 7 C.F.R. § 278.6.
- 3 7 U.S.C.A. § 2023.
- 4 *Broad Street Food Market, Inc. v. U.S.*, 720 F.2d 217 (1st Cir. 1983).
- 5 *Corder v. U.S.*, 107 F.3d 595 (8th Cir. 1997).

- 6 Corder v. U.S., 107 F.3d 595 (8th Cir. 1997).
- 7 Bakal Bros., Inc. v. U.S., 105 F.3d 1085, 1997 FED App. 0040P (6th Cir. 1997).
- 8 Bakal Bros., Inc. v. U.S., 105 F.3d 1085, 1997 FED App. 0040P (6th Cir. 1997).
- 9 Phany Poeng v. U.S., 167 F. Supp. 2d 1136 (S.D. Cal. 2001).

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## 79 Am. Jur. 2d Welfare § 32

American Jurisprudence, Second Edition | May 2021 Update

### Welfare Laws

Eric C. Surette, J.D.

## II. Federally Assisted Programs

### B. Particular Programs

#### 2. Food Programs

##### b. Food Donations by Commodity Credit Corporation

## § 32. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Public Assistance](#)  158

The Commodity Credit Corporation<sup>1</sup> is authorized, on such terms and under such regulations as the Secretary of Agriculture may deem in the public interest, to donate food commodities to such state, federal, or private agency or agencies as may be designated by the proper state or federal authority and approved by the Secretary, for use in the United States in nonprofit school-lunch programs, in nonprofit summer camps for children, in the assistance of needy persons, and in charitable institutions, including hospitals and facilities, to the extent that they serve needy persons (including infants and children).<sup>2</sup> The Secretary is required to obtain assurances that the recipients of such food donations will not diminish their normal expenditures for food by reason of such donation.<sup>3</sup>

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### Footnotes

- <sup>1</sup> The Commodity Credit Corporation has been created by statute as an agency and instrumentality of the United States, within the Department of Agriculture, subject to the general supervision and direction of the Secretary of Agriculture for the purpose of stabilizing, supporting, and protecting farm income and prices; of assisting in the maintenance of balanced and adequate supplies of agricultural commodities, products thereof, foods, feeds, and fibers; and of facilitating the orderly distribution of agricultural commodities. [15 U.S.C.A. § 714](#). Other general statutory provisions pertaining to the Commodity Credit Corporation are contained in [15 U.S.C.A. §§ 714a to 714p](#).
- <sup>2</sup> [7 U.S.C.A. § 1431\(a\)](#).

3 7 U.S.C.A. § 1431(a).

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## 79 Am. Jur. 2d Welfare § 33

American Jurisprudence, Second Edition | May 2021 Update

### Welfare Laws

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## II. Federally Assisted Programs

### B. Particular Programs

#### 3. Medical or Healthcare Assistance Programs or Services

##### a. Medicaid

##### i. In General

## § 33. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Health](#)  461 to 465

### A.L.R. Library

[Gender Reassignment or "Sex Change" Surgery as Covered Procedure Under State Medical Assistance Program](#), 60 A.L.R.6th 627

[Construction and Application of Medicaid Act's "Free Choice of Provider" Provision](#), 42 U.S.C.A. § 1396a(a)(23), 85 A.L.R. Fed. 2d 201

[Federal Criminal Prosecution Against Medical Practitioner for Fraud in Connection with Claims Under Medicaid, Medicare, or Similar Welfare Program Providing Medical Services](#), 66 A.L.R. Fed. 2d 1

### Treatises and Practice Aids



Federal Procedure, L. Ed. §§ 42:407 to 42:564

#### Forms

Am. Jur. Pleading and Practice Forms, Welfare Laws § 10

#### Law Reviews and Other Periodicals

Bienstock, [Administrative Oversight of State Medicaid Payment Policies: Giving Teeth to the Equal Access Provision](#), 39 Fordham Urb. L.J. 805 (2012)

Guiltinan, [Enforcing A Critical Entitlement: Preemption Claims As an Alternative Way to Protect Medicaid Recipients' Access to Healthcare](#), 51 B.C. L. Rev. 1583 (2010)

[Medicaid Access After Health Reform: The Shifting Legal Basis for Equal Access](#), 7 Seton Hall Circuit Rev. 477 (2011)

Meeks, [Private Enforcement of Spending Conditions After Douglas](#), 161 U. Pa. L. Rev. PENnumbra 56 (2012)

Title XIX of the Social Security Act,<sup>1</sup> commonly known as Medicaid, is intended to enable each state, through grants to the states, as far as practicable under the conditions in such state, to furnish (1) medical assistance on behalf of families with dependent children and of aged, blind, or disabled individuals, whose income and resources are insufficient to meet the costs of necessary medical services, and (2) rehabilitation and other services to help such families and individuals attain or retain capability for independence or self-care.<sup>2</sup> Medicaid is a cooperative federal-state program designed to furnish financial assistance to needy persons for their medically necessary care.<sup>3</sup> The Medicaid program provides federal financial assistance to states that choose to reimburse certain costs of medical treatment for needy persons.<sup>4</sup> The Medicaid program is designed to serve individuals and families who do not possess adequate funds for basic health services; it is the payer of last resort.<sup>5</sup>

#### Observation:

A state's participation in the Medicaid program is voluntary and optional, but once a state decides to participate, it must comply with federal statutory and regulatory requirements.<sup>6</sup> Even when a state elects to provide an optional service, that service becomes part of the state Medicaid plan and is subject to the requirements of federal law.<sup>7</sup> Absent a showing to the contrary, a court presumes that a state follows the federal rules it has pledged to uphold when opting into the federal scheme for Medicaid.<sup>8</sup>

"Medical assistance" is defined to include payment of the cost of a wide range of in-patient and out-patient medical services to eligible individuals.<sup>9</sup> "Medical assistance" encompasses both payment for services provided and the services themselves.<sup>10</sup>

Standards prescribed by the Secretary of Health and Human Services for administering the Medicaid program are entitled to legislative effect.<sup>11</sup> However, the Social Security Administration's policy interpretations contained in the Program Operations Manual System do not have the force and effect of a statute or regulation by the federal agency.<sup>12</sup>

A court must construe state Medicaid statutes or regulations in a way that complies with federal law.<sup>13</sup>

## CUMULATIVE SUPPLEMENT

### Statutes:

[42 U.S.C.A. § 1396w-4a](#), as added effective April 18, 2019, provides that, notwithstanding Social Security Act § 1902(a)(1) (relating to statewideness) and Social Security Act § 1902(a)(10)(B) (relating to comparability), beginning October 1, 2022, a state, at its option as a state plan amendment, may provide for medical assistance under the Social Security Act to children with medically complex conditions who choose to enroll in a health home under this section by selecting a designated provider, a team of health care professionals operating with such a provider, or a health team as the child's health home for purposes of providing the child with health home services.

### Cases:

The provision of the Medicaid Act, requiring States to set reimbursement rates sufficient to enlist enough providers of health care services, lacks the sort of rights-creating language needed to imply a private right of action to enforce the provision. (Per Justice Scalia, with three Justices concurring and one Justice concurring in the judgment.) Medicaid Act, § 1902(a)(30)(A), [42 U.S.C.A. § 1396a\(a\)\(30\)\(A\)](#). [Armstrong v. Exceptional Child Center, Inc.](#), 135 S. Ct. 1378 (2015).

A violation of the Medicaid Act would occur when a child who was in the Arizona foster care system, and who was eligible under the Medicaid Act for early and periodic screening, diagnostic, and treatment services, did not receive these services at all, or did not receive them in a timely manner. Social Security Act § 1905, [42 U.S.C.A. § 1396d\(r\)\(1\)-\(5\)](#). [Tinsley v. Faust](#), 411 F. Supp. 3d 462, 104 Fed. R. Serv. 3d 1794 (D. Ariz. 2019).

Emergency care provider may not bring third-party beneficiary suit to enforce provision mandated by Medicaid statute in contract between state and managed care organization (MCO) that requires MCO to provide coverage for emergency services without regard to prior authorization or emergency care provider's contractual relationship with MCO. Social Security Act § 1903, [42 U.S.C.A. § 1396b\(m\)](#); [42 U.S.C.A. § 1396u-2](#). [Prince George's Hospital Center v. Advantage Healthplan Inc.](#), 985 F. Supp. 2d 38 (D.D.C. 2013).

Action for temporary restraining order and preliminary injunction brought by charitable organization that operated family planning centers and clinics to prevent Secretary of Louisiana Department of Health and Hospitals from terminating Medicaid provider agreements was ripe for review; Secretary made it clear that she intended to terminate agreements with organization, intending to enforce what she perceived to be state law in accordance with her construction of federal statutory law, and issues presented were purely legal ones involving precise meaning of Medicaid statute and constitutional clauses. U.S. Const. art. 3, § 2. [Planned Parenthood Gulf Coast, Inc. v. Kliebert](#), 141 F. Supp. 3d 604 (M.D. La. 2015).

Although states must comply with federal Medicaid requirements, Medicaid is designed to provide some flexibility to the states to formulate a plan tailored to each state's individual needs. Social Security Act § 1900, [42 U.S.C.A. § 1396 et seq.](#) [Atlanticare Medical Center v. Division of Medical Assistance](#), 485 Mass. 233, 149 N.E.3d 343 (2020).

**[END OF SUPPLEMENT]**

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Footnotes

- 1 [42 U.S.C.A. §§ 1396 to 1396w-5.](#)
- 2 [42 U.S.C.A. § 1396-1.](#)
- 3 [Reinholdt v. North Dakota Dept. of Human Services](#), 2009 ND 17, 760 N.W.2d 101 (N.D. 2009).
- 4 [Smalley v. Nebraska Dept. of Health and Human Services](#), 283 Neb. 544, 811 N.W.2d 246 (2012), petition for cert. filed, 81 U.S.L.W. 3221 (U.S. Oct. 11, 2012).
- 5 [In re Barkema Trust](#), 690 N.W.2d 50 (Iowa 2004).
- 6 [Sandoz, Inc. v. State](#), 2012 WL 2866764 (Ala. 2012); [Smart v. State, Dept. of Health And Social Services](#), 237 P.3d 1010 (Alaska 2010); [Kootenai Medical Center ex rel. Teresa K. v. Idaho Dept. of Health and Welfare](#), 147 Idaho 872, 216 P.3d 630 (2009); [Smalley v. Nebraska Dept. of Health and Human Services](#), 283 Neb. 544, 811 N.W.2d 246 (2012), petition for cert. filed, 81 U.S.L.W. 3221 (U.S. Oct. 11, 2012).  
Although a state possesses wide discretion in administering its Medicaid programs, that discretion is qualified by its mandate to adhere to federal statutes and corresponding federal regulations. [Hines v. Department of Public Aid](#), 221 Ill. 2d 222, 302 Ill. Dec. 711, 850 N.E.2d 148 (2006).
- 7 [Kootenai Medical Center ex rel. Teresa K. v. Idaho Dept. of Health and Welfare](#), 147 Idaho 872, 216 P.3d 630 (2009).
- 8 [In re Guardianship of Lamb](#), 173 Wash. 2d 173, 265 P.3d 876 (2011).
- 9 [42 U.S.C.A. § 1396d\(a\).](#)  
As to medical assistance required to be provided by state plans, see [§ 34](#).
- 10 [42 U.S.C.A. § 1396d\(a\).](#)
- 11 [Timm v. Montana Dept. of Public Health and Human Services](#), 2008 MT 126, 343 Mont. 11, 184 P.3d 994 (2008).
- 12 [Brewer v. Schalansky](#), 278 Kan. 734, 102 P.3d 1145 (2004).
- 13 [Jacobus v. Department of PATH](#), 177 Vt. 496, 2004 VT 70, 857 A.2d 785 (2004).

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## 79 Am. Jur. 2d Welfare § 34

American Jurisprudence, Second Edition | May 2021 Update

### Welfare Laws

Eric C. Surette, J.D.

## II. Federally Assisted Programs

### B. Particular Programs

#### 3. Medical or Healthcare Assistance Programs or Services

##### a. Medicaid

##### i. In General

## § 34. State plans

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Health](#)  462

### A.L.R. Library

[Limitation on right of chiropractors and osteopathic physicians to participate in public medical welfare programs, 8 A.L.R.4th 1056](#)

[Construction and Application of Medicaid Act's "Free Choice of Provider" Provision, 42 U.S.C.A. § 1396a\(a\)\(23\), 85 A.L.R. Fed. 2d 201](#)

[Judicial review under 42 U.S.C.A. sec. 1316\(a\)\(3-5\) of determination by Secretary of Health, Education, and Welfare that state public-assistance plan does not conform to federal requirements, 18 A.L.R. Fed. 831](#)

### Treatises and Practice Aids

Federal Procedure, L. Ed. §§ 42:409 to 42:426

#### Forms

Am. Jur. Pleading and Practice Forms, Welfare Laws § 10

#### Law Reviews and Other Periodicals

Bienstock, [Administrative Oversight of State Medicaid Payment Policies: Giving Teeth to the Equal Access Provision](#), 39 Fordham Urb. L.J. 805 (2012)

Guiltinan, [Enforcing A Critical Entitlement: Preemption Claims As an Alternative Way to Protect Medicaid Recipients' Access to Healthcare](#), 51 B.C. L. Rev. 1583 (2010)

[Medicaid Access After Health Reform: The Shifting Legal Basis for Equal Access](#), 7 Seton Hall Circuit Rev. 477 (2011)

Meeks, [Private Enforcement of Spending Conditions After Douglas](#), 161 U. Pa. L. Rev. PENnumbra 56 (2012)

The statutes providing for grants to states for medical assistance programs specifically make provision for state plans for medical assistance<sup>1</sup> and provide that the sums made available under the statute authorizing appropriations for the purposes of the applicable statutes are to be used for making payments to states which have submitted, and had approved by the Secretary, state plans for medical assistance.<sup>2</sup> A state plan must contain certain provisions as required by statute, including the mandatory statewide effect of such a program, the types and amounts of medical assistance, as well as include reasonable standards for determining eligibility for and the extent of medical assistance under the plan.<sup>3</sup> The state plan for Medicaid is a comprehensive written statement submitted by the state Medicaid agency describing the nature and scope of its Medicaid program and giving assurance that it will be administered in conformity with applicable statutory and regulatory requirements and contains all information necessary for the Centers for Medicare & Medicaid Services to determine whether the plan can be approved to serve as a basis for federal financial participation in the state program.<sup>4</sup>

The Secretary is required to approve any plan which fulfills the statutorily specified conditions unless the plan imposes, as a condition of eligibility for medical assistance thereunder:

- (1) any age requirement of more than 65 years;
- (2) any residence requirement which excludes any individual who resides in the state, regardless of whether or not the residence is maintained permanently or at a fixed address; and
- (3) any citizenship requirement which excludes any citizen of the United States.<sup>5</sup>

A state plan for medical assistance must provide for making medical assistance available,<sup>6</sup> including at least the following care and services:

- (1) in-patient hospital services;<sup>7</sup>
- (2) out-patient hospital services;<sup>8</sup>
- (3) other laboratory and X-ray services;<sup>9</sup>
- (4) nursing facility services, early and periodic screening, diagnostic, and treatment services, family planning services and supplies furnished to individuals of child-bearing age, and counseling and pharmacotherapy for cessation of tobacco use by pregnant women;<sup>10</sup>
- (5) physicians' services and medical and surgical services furnished by a dentist;<sup>11</sup>
- (6) services furnished by a certified pediatric nurse practitioner or certified family nurse practitioner;<sup>12</sup> and
- (7) freestanding birth center services.<sup>13</sup>

States participating in the Medicaid program must develop a plan that includes reasonable standards for determining an individual's eligibility for Medicaid and the extent of medical assistance to be provided.<sup>14</sup> Although under the Medicaid Act states are given considerable latitude in formulating the terms of their own medical assistance plans,<sup>15</sup> state Medicaid plans must comply with requirements imposed both by the Social Security Act itself and by the Secretary of Health and Human Services.<sup>16</sup>

**Observation:**

The salient feature of the federal requirement that a single state agency administer the Medicaid program is that the agency retains the ultimate authority to assure that the Medicaid program is administered according to the federal statutes and regulations.<sup>17</sup>

Regulations provide that a state Medicaid plan must provide that it will be amended whenever necessary to reflect certain material changes.<sup>18</sup> An interpretive change in a state's Medicaid plan need not be "significant" as a predicate to triggering the plan amendment regulations.<sup>19</sup>

**Practice Tip:**

Medicaid statutory provisions requiring state Medicaid plans to provide a system for applying for aid and to furnish aid with reasonable promptness<sup>20</sup> did not evidence a congressional intent to create individual rights enforceable by Medicaid providers through a civil rights action under 42 U.S.C.A. § 1983.<sup>21</sup> However, it had also been said that individuals have a federal right to reasonably prompt provision of assistance under the Medicaid Act, and this right is enforceable in a civil rights action.<sup>22</sup> It has also been held that the Medicaid freedom of choice provision<sup>23</sup> confers individual rights enforceable under § 1983.<sup>24</sup>

## CUMULATIVE SUPPLEMENT

### Statutes:

[42 U.S.C.A. § 1396d\(a\)\(3\)](#), as amended effective March 18, 2020, provides that a state plan for medical assistance must provide for making available (A) other laboratory and X-ray services; and (B) in vitro diagnostic products (as defined in [21 C.F.R. § 809.3\(a\)](#)) administered during any portion of the emergency period defined in [42 U.S.C.A. § 1320b-5\(g\)\(1\)\(B\)](#) (relating to the 2019 Novel Coronavirus) beginning on or after March 18, 2020 for the detection of SARS-CoV-2 or the diagnosis of the virus that causes COVID-19 that are approved, cleared, or authorized under [21 U.S.C.A. §§ 360\(k\), 360c, 360e](#), or [21 U.S.C.A. § 360bbb-3](#).

42 C.F.R. Pt. 433, subpt. E ([42 C.F.R. §§ 433.202 to 433.206](#)), as added effective June 3, 2013, establishes methodologies for determining federal share of Medicaid expenditures for the Adult Eligibility Group, and includes definitions of eligibility and benefits ([42 C.F.R. § 433.202](#)), and methodology ([42 C.F.R. § 433.206](#)).

### Cases:

Medicaid Act provision requiring that a state plan for medical assistance provide that all individuals wishing to make application for medical assistance under the plan the opportunity to do so, and that such assistance be furnished with reasonable promptness to all eligible individuals created a right enforceable under [§ 1983](#). Medicaid Act, § 1902(a)(8), [42 U.S.C.A. § 1396a\(a\)\(8\)](#); [42 U.S.C.A. § 1983](#). [Romano v. Greenstein](#), 721 F.3d 373 (5th Cir. 2013).

Record did not allow Court of Appeals to determine whether Medicaid participant's move to managed care program, in which he was no longer subject to Illinois legislation that capped number of prescriptions he could receive without prior approval, was part of broader policy change affecting all Medicaid recipients in participant's area, such that there would not be reasonable expectation that participant would be subjected to prior-approval requirement in future, and thus Court of Appeals would remand participant's action challenging prior-approval requirement for limited fact-finding to determine whether his claims were mooted by his move to managed care. S.H.A. [305 ILCS 5/5–5.12\(j\)](#). [Ciarpaglini v. Norwood](#), 817 F.3d 541 (7th Cir. 2016).

A provision of the Medicaid Act that satisfies the *Blessing* test for determining whether a particular statutory provision gives rise to a federal right redressable via [§ 1983](#) necessarily meets the requirement of the *Pennhurst* clear statement rule. Medicaid Act, § 1901, [42 U.S.C.A. § 1396](#); [42 U.S.C.A. § 1983](#). [Planned Parenthood Arizona, Inc. v. Betlach](#), 922 F. Supp. 2d 858 (D. Ariz. 2013), *aff'd*, 2013 WL 4465871 (9th Cir. 2013).

Hospitals and health care districts had no private right to seek enforcement, via writ of mandate under California law, of provision of Medicaid Act requiring a state plan for medical assistance to provide methods and procedures relating to the utilization of and payment for care and services under the plan. Social Security Act § 1902, [42 U.S.C.A. § 1396a\(a\)\(30\)\(A\)](#); Cal. Civ. Proc. Code § 1085. [Tulare Local Health Care District v. California Department of Health Care Services](#), 328 F. Supp. 3d 988 (N.D. Cal. 2018).

Balancing of equities favored grant of preliminary injunction prohibiting State from impermissibly terminating healthcare provider from state's Medicaid program; patients would have been deprived of their statutory right to qualified provider of

their choice absent injunction, State would simply have to continue to reimburse provider for Medicaid services as it had done previously, and State had no legitimate interest in perpetuating circumstances contrary to law. Social Security Act § 1902, 42 U.S.C.A. § 1396a(a)(23)(A). *Planned Parenthood South Atlantic v. Baker*, 326 F. Supp. 3d 39 (D.S.C. 2018).

While oral surgeon, a MaineCare provider, was permitted to bill his usual and customary charge for administering drugs, the Department of Health and Human Services was entitled to limit its payment to the acquisition cost and to seek recoupment of any overpayment. Code Me. R. 10-144 Ch. 101, Ch. III, § 25. *Palian v. Department of Health and Human Services*, 2020 ME 131, 242 A.3d 164 (Me. 2020).

A state participating in Medicaid may adopt a definition of medical necessity that places reasonable limits on a physician's discretion and, therefore, is not required to provide coverage for every procedure falling within a mandatory service area. Social Security Act, § 1902(a)(17), 42 U.S.C.A. § 1396a(a)(17). *Bailey v. Montana Dept. of Public Health and Human Services*, 2015 MT 37, 343 P.3d 170 (Mont. 2015).

Although states participating in the Medicaid program have the authority to adopt reasonable standards relating to the qualifications of health care providers, these standards must relate to the ability of the provider to perform the Medicaid services in question, i.e., the provider's fitness to render the medical services required. Social Security Act § 1900, 42 U.S.C.A. § 1396; 42 C.F.R. § 431.51(c)(2). *Dube v. New Hampshire Department of Health and Human Services*, 97 A.3d 241 (N.H. 2014).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 42 U.S.C.A. § 1396a.
- 2 42 U.S.C.A. § 1396.
- 3 42 U.S.C.A. § 1396a(a).
- 4 42 C.F.R. § 430.10.
- 5 42 U.S.C.A. § 1396a(b).
- 6 42 U.S.C.A. § 1396a(a)(10)(a).
- 7 42 U.S.C.A. § 1396d(a)(1).
- 8 42 U.S.C.A. § 1396d(a)(2).
- 9 42 U.S.C.A. § 1396d(a)(3).
- 10 42 U.S.C.A. § 1396d(a)(4).
- 11 42 U.S.C.A. § 1396d(a)(5).
- 12 42 U.S.C.A. § 1396d(a)(21).
- 13 42 U.S.C.A. § 1396d(a)(28).
- 14 *In re Huff*, 154 N.H. 414, 910 A.2d 1287 (2006).  
As to eligibility for benefits, generally, see § 44.
- 15 *Department of Public Welfare v. Devereux Hosp. Texas Treatment Network (K.C.)*, 579 Pa. 313, 855 A.2d 842 (2004).  
States are given substantial discretion in determining how federal funds from the Medicaid program are administered. *Timm v. Montana Dept. of Public Health and Human Services*, 2008 MT 126, 343 Mont. 11, 184 P.3d 994 (2008).
- 16 *In re Huff*, 154 N.H. 414, 910 A.2d 1287 (2006).
- 17 *The Profit Recovery Group, USA, Inc. v. Commissioner, Dept. of Administrative and Financial Services*, 2005 ME 58, 871 A.2d 1237 (Me. 2005).
- 18 *Concourse Rehabilitation & Nursing Center, Inc. v. DeBuono*, 179 F.3d 38 (2d Cir. 1999).
- 19 *Concourse Rehabilitation & Nursing Center, Inc. v. DeBuono*, 179 F.3d 38 (2d Cir. 1999).



- 20 42 U.S.C.A. § 1396a(a)(8).
- 21 Sanders ex rel. Rayl v. Kansas Dept. of Social and Rehabilitation Services, 317 F. Supp. 2d 1233 (D. Kan. 2004); Bio-Medical Applications of NC, Inc. v. Electronic Data Systems Corp., 412 F. Supp. 2d 549 (E.D. N.C. 2006).
- 22 Smith v. Benson, 703 F. Supp. 2d 1262 (S.D. Fla. 2010).
- 23 42 U.S.C.A. § 1396a(23).
- 24 Planned Parenthood Arizona, Inc. v. Betlach, Medicare & Medicaid P 304179, 2012 WL 5188009 (D. Ariz. 2012).

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## 79 Am. Jur. 2d Welfare § 35

American Jurisprudence, Second Edition | May 2021 Update

### Welfare Laws

Eric C. Surette, J.D.

## II. Federally Assisted Programs

### B. Particular Programs

#### 3. Medical or Healthcare Assistance Programs or Services

##### a. Medicaid

##### i. In General

## § 35. Waivers of state plan requirements

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Health](#)  462

### Treatises and Practice Aids

[Federal Procedure, L. Ed. §§ 42:414 to 42:416](#)

The Secretary of Health and Human Services, to the extent he or she finds it to be cost-effective and efficient and not inconsistent with the purposes of the statutes governing Medicaid, may waive most of the statutory requirements for Medicaid programs<sup>1</sup> as necessary to permit a state to effect one or more of the cost-saving techniques specified by statute.<sup>2</sup> A state may also obtain a waiver of federal requirements, under which it may impose a deduction, cost-sharing, or similar charge of up to twice the "nominal charge" established under the state Medicaid plan for outpatient services if the outpatient services are received in a hospital emergency room but are not emergency services and if the state has shown that Medicaid recipients have actually available and accessible to them alternative sources of nonemergency outpatient services.<sup>3</sup>

## CUMULATIVE SUPPLEMENT

**Statutes:**

[42 C.F.R. § 431.57](#) was removed effective October 1, 2013. As to the current similar provision, see [42 C.F.R. § 447.54\(b\)](#).

**Cases:**

Agency for Persons with Disabilities was required to consider all of client's services included in Agency-approved cost plan, rather than only client's need for personal care assistance when making tier assignment for Medicaid Waiver Program; administrative rule governing tier assignment directed that services listed in rule were to be used as the "primary basis" for tier assignment, but it did not state that the listed services were the only services to be considered, rather all costs directly related to intensive medical needs could be considered. [West's F.S.A. § 393.0661\(3\)\(a\)](#). [Moreland v. Agency for Persons with Disabilities](#), 112 So. 3d 152 (Fla. 1st DCA 2013).

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**Footnotes**

- 1 [42 U.S.C.A. § 1396a](#).
- 2 [42 U.S.C.A. § 1396n\(b\)](#).
- 3 [42 U.S.C.A. § 1396o\(a\)\(3\), \(b\)\(3\)](#); [42 C.F.R. §§ 430.25\(c\)\(3\), \(g\), 431.57\(a\), \(d\)](#).

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## 79 Am. Jur. 2d Welfare § 36

American Jurisprudence, Second Edition | May 2021 Update

Welfare Laws

Eric C. Surette, J.D.

### II. Federally Assisted Programs

#### B. Particular Programs

#### 3. Medical or Healthcare Assistance Programs or Services

##### a. Medicaid

##### i. In General

## § 36. State hearing procedures for applicants and recipients

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Health](#)  471(5)

The Centers for Medicare & Medicaid Services has issued regulations<sup>1</sup> implementing the statutory provision<sup>2</sup> which requires that a state plan provide an opportunity for a fair hearing to any person whose claim for assistance is denied or not acted upon promptly.<sup>3</sup> The regulations also prescribe procedures for an opportunity for a hearing if a state agency or prepaid ambulatory health plan takes action authorized by the regulations to suspend, terminate, or reduce services, or a managed care organization or prepaid inpatient health plan takes action under the regulations<sup>4</sup> dealing with the grievance system provided for managed care organizations.<sup>5</sup> In addition, the regulations prescribe procedures for an opportunity for hearing if the Medicaid agency takes action to suspend, terminate, or reduce services, and implement certain statutory provisions<sup>6</sup> by providing an appeals process for individuals proposed to be transferred or discharged from nursing facilities and those adversely affected by certain preadmission screening and annual resident review requirements.<sup>7</sup> A state plan for Medicaid is required to provide that the requirements applicable to such appeal process are met.<sup>8</sup>

### CUMULATIVE SUPPLEMENT

#### Statutes:

[42 C.F.R. § 431.200\(d\)](#), as added effective January 20, 2017, provides that 42 C.F.R. Pt 431, Subpt. E ([42 C.F.R. §§ 431.200 to 431.250](#)) implements 42 U.S.C.A. § 1943(b)(3), and section 1413 of the Affordable Care Act to permit coordinated hearings and appeals among insurance affordability programs.

**Cases:**

Nursing home residents who applied for long-term care Medicaid benefits established likelihood of success on claim against state officials for violation of the "reasonable promptness" requirement of Medicaid Act, as required for issuance of preliminary injunction requiring defendants to comply with promptness requirements of the Act, where residents established that thousands of Medicaid applications remained pending in state application processing system beyond deadlines described in Act and federal regulations. Social Security Act § 1902, [42 U.S.C.A. § 1396a\(a\)\(8\)](#). [Koss v. Norwood](#), 305 F. Supp. 3d 897, 100 Fed. R. Serv. 3d 733 (N.D. Ill. 2018).

**[END OF SUPPLEMENT]**

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Footnotes

- |   |  |
|---|--|
| 1 | <a href="#">42 C.F.R. §§ 431.200 to 431.250.</a>                           |
| 2 | <a href="#">42 U.S.C.A. § 1396(a)(3).</a>                                  |
| 3 | <a href="#">42 C.F.R. § 431.200(a).</a>                                    |
| 4 | <a href="#">42 C.F.R. §§ 438.400 to 438.424.</a>                           |
| 5 | <a href="#">42 C.F.R. § 431.200(b).</a>                                    |
| 6 | <a href="#">42 U.S.C.A. §§ 1395i-3(f)(3), 1396r(f)(3), 1396r(e)(7)(F).</a> |
| 7 | <a href="#">42 C.F.R. § 431.200(c).</a>                                    |
| 8 | <a href="#">42 C.F.R. § 431.202.</a>                                       |

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## 79 Am. Jur. 2d Welfare § 37

American Jurisprudence, Second Edition | May 2021 Update

### Welfare Laws

Eric C. Surette, J.D.

## II. Federally Assisted Programs

### B. Particular Programs

#### 3. Medical or Healthcare Assistance Programs or Services


##### a. Medicaid

##### i. In General

## § 37. Supremacy of federal law

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3550

West's Key Number Digest, [Health](#)  462, 464

West's Key Number Digest, [States](#)  18.79

### Forms

[Am. Jur. Legal Forms 2d § 136:29.50](#)

The Supremacy Clause of the United States Constitution<sup>1</sup> compels compliance with federal law and regulations by participants in a state medical assistance program funded under Medicaid.<sup>2</sup> Thus, while Medicaid is a system of cooperative federalism, once a state voluntarily accepts the conditions imposed by Congress, the Supremacy Clause obliges it to comply with federal requirements.<sup>3</sup> Accordingly, when federal law requires the disclosure of records maintained by private physicians of patient treatment during a period of alleged Medicaid fraud, a conflicting state statute cannot prevent the disclosure of such records.<sup>4</sup> Likewise, a state statute governing the recovery of Medicaid benefits following the death of a recipient was preempted by federal Medicaid statutes, to the extent that the state statute authorized recovery from a surviving spouse's estate of assets owned by a recipient spouse as marital property or as jointly owned property at any time during the marriage, as in order to be recoverable,

the assets must have been subject to an interest of the recipient spouse at the time of his or her death.<sup>5</sup> However, when a state statute does not conflict with a federal provision related to medical assistance programs, the state provision is enforceable.<sup>6</sup> Likewise, when there is no facial conflict between Medicaid's structure and purpose and a state statute, the statute is not facially subject to implied conflict preemption under the Supremacy Clause.<sup>7</sup>

**Observation:**

For purposes of preemption analysis, federal Medicaid statutes neither expressly preempt state law nor so completely occupy the field as to leave no room for state action because the Medicaid program specifically permits and even requires action by participating states.<sup>8</sup> Consequently, preemption can only occur due to conflict preemption, that is, if a state law conflicts with a specific federal Medicaid law or is an obstacle to federal Medicaid purposes.<sup>9</sup> Although state statutes are generally not entitled to a presumption against implied conflict preemption, there may be a presumption against preemption of state Medicaid statutes.<sup>10</sup>

State regulations regarding Medicaid cannot conflict with the federal regulations,<sup>11</sup> and to the extent that state Medicaid regulations conflict with the federal Medicaid statutes, the federal provisions prevail.<sup>12</sup>

## CUMULATIVE SUPPLEMENT

**Cases:**

Providers of residential habilitation services to Medicaid-eligible individuals could not bring an action seeking injunctive relief to enforce against a State the Medicaid Act's requirement of setting reimbursement rates sufficient to enlist enough providers of health care services; Medicaid Act, by providing an administrative remedy, implicitly precluded such a private enforcement action, and the provision that the providers sought to enforce was judicially unadministrable. Medicaid Act, §§ 1902(a)(30)(A), 1904, 42 U.S.C.A. §§ 1396a(a)(30)(A), 1396c. *Armstrong v. Exceptional Child Center, Inc.*, 135 S. Ct. 1378 (2015).

North Carolina statute governing the State's reimbursement from the proceeds of tort damages recovered by a Medicaid beneficiary is preempted by the federal Medicaid statute's anti-lien provision, to the extent that the North Carolina statute can be interpreted as creating a conclusive presumption that one-third of a Medicaid beneficiary's tort recovery represents compensation for medical expenses; abrogating *Andrews v. Haygood*, 362 N.C. 599, 669 S.E.2d 310. Medicaid Act, § 1917(a)(1), 42 U.S.C.A. § 1396p(a)(1); Social Security Act, §§ 1902(a)(25)(H), 1912(a)(1)(A), 42 U.S.C.A. §§ 1396a(a)(25)(H), 1396k(a)(1)(A); West's N.C.G.S.A. § 108A-57. *Wos v. E.M.A. ex rel. Johnson*, 133 S. Ct. 1391 (2013).

## [END OF SUPPLEMENT]

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Footnotes

1 U.S. Const. Art. VI, cl. 2.  
2 Inner Harbour Hospitals, Ltd. on Behalf of Hibberd v. State Dept. of Social Services, 251 Neb. 793, 559  
N.W.2d 487 (1997).  
A state Medicaid provision that allowed reimbursement for intermittent skilled home nursing service, but not  
part-time service, was invalid insofar as it conflicted with a federal regulation that required reimbursement  
for both part-time and intermittent skilled home nursing service. *TLC Home Health Care, L.L.C. v. Iowa*  
*Dept. of Human Services*, 638 N.W.2d 708 (Iowa 2002).  
As to the preemptive effect of the Medicaid antilien statute, see § 96.  
3 Lankford v. Sherman, 451 F.3d 496 (8th Cir. 2006).  
4 In re Grand Jury Investigation, 441 A.2d 525 (R.I. 1982).  
5 In re Estate of Barg, 752 N.W.2d 52 (Minn. 2008).  
6 Wisconsin Dept. of Health and Family Services v. Blumer, 534 U.S. 473, 122 S. Ct. 962, 151 L. Ed. 2d 935,  
186 A.L.R. Fed. 639 (2002).  
State probate laws which protect an incompetent's estate do not have as their essential purpose the restriction  
of Medicaid eligibility, and thus, they may constitutionally coexist with federal laws regulating Medicaid  
eligibility. *Probate of Marcus*, 199 Conn. 524, 509 A.2d 1 (1986).  
7 Pharmaceutical Research and Mfrs. of America v. Concannon, 249 F.3d 66 (1st Cir. 2001), judgment aff'd,  
538 U.S. 644, 123 S. Ct. 1855, 155 L. Ed. 2d 889 (2003).  
8 In re Estate of Barg, 752 N.W.2d 52 (Minn. 2008).  
9 Martin ex rel. Hoff v. City of Rochester, 642 N.W.2d 1 (Minn. 2002).  
10 Pharmaceutical Research and Mfrs. of America v. Meadows, 304 F.3d 1197 (11th Cir. 2002).  
11 Brewer v. Schalansky, 278 Kan. 734, 102 P.3d 1145 (2004).  
12 Wilson v. Nebraska Dept. of Health and Human Services, 272 Neb. 131, 718 N.W.2d 544 (2006).

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## 79 Am. Jur. 2d Welfare § 38

American Jurisprudence, Second Edition | May 2021 Update

### Welfare Laws

Eric C. Surette, J.D.

## II. Federally Assisted Programs

### B. Particular Programs

#### 3. Medical or Healthcare Assistance Programs or Services

##### a. Medicaid

##### i. In General

### § 38. Exclusion of certain individuals and entities from participation in federal health care programs

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3550

West's Key Number Digest, [Health](#)  467

The following individuals and entities are excluded from participation in any federal health care program:

- (1) any individual or entity that has been convicted of program-related crimes;
  - (2) any individual or entity that has been convicted, under federal or state law, of a criminal offense relating to neglect or abuse of patients in connection with the delivery of a health care item or service;
  - (3) any individual or entity that has been convicted of a felony relating to health care fraud; and
  - (4) any individual or entity that has been convicted of a felony relating to a controlled substance.<sup>1</sup>
- A plea of no contest to a charge of knowingly filing a false medical claim involving Medicaid reimbursement is a conviction of "program-related crime," and thus, an exclusion from the Medicaid program is mandatory.<sup>2</sup> The mandatory exclusion provision does not violate the double jeopardy clause as the sanction is remedial and not punitive in nature.<sup>3</sup>

Provision is also made establishing the discretionary authority of the Secretary of Health and Human Services to exclude individuals and entities in 16 enumerated cases from participation in any federal health care program.<sup>4</sup>

## CUMULATIVE SUPPLEMENT

### Statutes:

[42 U.S.C.A. § 1320a-7\(b\)\(17\)](#), as added effective April 18, 2019, provides that any manufacturer or officer, director, agent, or managing employee of such manufacturer that knowingly misclassifies a covered outpatient drug under an agreement under applicable statute, knowingly fails to correct such misclassification, or knowingly provides false information related to drug pricing, drug product information, or data related to drug pricing or drug product information.

### Cases:

Evidence supported Department of Health and Human Services' (DHHS) decision to permanently exclude Medicaid service provider from Medicaid program as a sanction for her billing for overlapping services and noncompliance with DHHS billing standards and practices, and the sanction was not so disproportionate to rise to level of arbitrary or capricious action, where DHHS gave significant consideration to extent of violations, provider received nearly \$880 in overpayments, provider was unable to provide DHHS copies of records when requested, and provider's lack of recordkeeping made it impossible for provider to conduct the self-audit required by DHHS as part of its review. [471 Neb. Admin. Code, ch. 2, § 002.05 \(2015\)](#). [Tran v. State, 303 Neb. 1, 926 N.W.2d 641 \(2019\)](#).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 [42 U.S.C.A. § 1320a-7\(a\)\(1\) to \(4\)](#).
- 2 [Travers v. Sullivan, 791 F. Supp. 1471 \(E.D. Wash. 1992\)](#), judgment *aff'd*, [20 F.3d 993 \(9th Cir. 1994\)](#).
- 3 [Manocchio v. Kusserow, 961 F.2d 1539 \(11th Cir. 1992\)](#); [Kahn v. Inspector General of U.S. Dept. of Health and Human Services, 848 F. Supp. 432 \(S.D. N.Y. 1994\)](#).
- 4 [42 U.S.C.A. § 1320a-7\(b\)\(1\) to \(16\)](#).

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## 79 Am. Jur. 2d Welfare § 39

American Jurisprudence, Second Edition | May 2021 Update

### Welfare Laws

Eric C. Surette, J.D.

## II. Federally Assisted Programs

### B. Particular Programs

#### 3. Medical or Healthcare Assistance Programs or Services

##### a. Medicaid

##### i. In General

## § 39. Treatments of aliens under Medicaid

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Health](#)  470

### A.L.R. Library

[Validity, Construction, and Application of State Statutes Limiting or Barring Public Health Care to Indigent Aliens, 113 A.L.R.5th 95](#)

No payment may be made to a state for medical assistance furnished to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law;<sup>1</sup> unless such care and services are necessary for the treatment of an emergency medical condition of the alien, such alien otherwise meets the eligibility requirements for medical assistance under an approved state plan, and such care and services are not related to an organ transplant procedure.<sup>2</sup> An "emergency medical condition" is one which manifests itself by acute symptoms at the time of treatment and requires immediate treatment to stabilize the condition, such that an absence of this treatment would reasonably be expected to result in placing the alien's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.<sup>3</sup> The statute entitling hospitals to Medicaid reimbursement for treating the "emergency medical condition" of an undocumented alien does not limit an alien patient to treatment rendered in the emergency room.<sup>4</sup> The statute does not focus solely on the condition of the patient at one instant in time, but instead, takes a forward looking view asking whether the absence

of immediate medical attention could reasonably be expected to result in one of the three adverse consequences listed in the statute.<sup>5</sup> The statute thus considers both the patient's current condition as presently manifested by acute symptoms and how that current condition may affect the health of the patient in the days to come.<sup>6</sup>

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Footnotes

- 1 42 U.S.C.A. § 1396b(v)(1).
- 2 42 U.S.C.A. § 1396b(v)(2).
- 3 *Diaz v. Division of Social Services and Div. of Medical Assistance, North Carolina Dept. of Health and Human Services*, 360 N.C. 384, 628 S.E.2d 1 (2006).
- 4 *Szewczyk v. Department of Social Services*, 275 Conn. 464, 881 A.2d 259 (2005).
- 5 *Szewczyk v. Department of Social Services*, 275 Conn. 464, 881 A.2d 259 (2005).
- 6 *Szewczyk v. Department of Social Services*, 275 Conn. 464, 881 A.2d 259 (2005).

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## 79 Am. Jur. 2d Welfare § 40

American Jurisprudence, Second Edition | May 2021 Update

### Welfare Laws

Eric C. Surette, J.D.

## II. Federally Assisted Programs

### B. Particular Programs

#### 3. Medical or Healthcare Assistance Programs or Services

##### a. Medicaid

##### i. In General

## § 40. Contributions by recipients

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Health](#)  464, 491

The federal Medicaid law permits, but does not require, states to charge certain recipients "nominal" payments ("copayments") for specific services.<sup>1</sup> Except as provided, a state plan must provide that in the case of individuals described in specific sections of the applicable statute<sup>2</sup> who are eligible under the plan, no enrollment fee, premium, or similar charge will be imposed under the plan,<sup>3</sup> and no deduction, cost sharing, or similar charges may be imposed under the plan with respect to certain enumerated services.<sup>4</sup> The state plan must also provide that in the case of individuals other than those described in specific sections of the applicable statute<sup>5</sup> who are eligible under the plan, there may be imposed an enrollment fee, premium, or similar charge, which (as determined in accordance with standards prescribed by the Secretary) is related to the individual's income<sup>6</sup> although no deduction, cost sharing, or similar charges may be imposed under the plan with respect to certain enumerated services.<sup>7</sup> A state may also, within the requirements of the statute, provide for monthly premiums and other cost sharing provisions.<sup>8</sup>

### Caution:

Federal law requires that a state Medicaid plan ensure that no individual eligible for services be denied those services "on account of such individual's inability to pay" a deduction, cost sharing, or similar charge.<sup>9</sup>

State plans must provide that in the case of an individual who is entitled to medical assistance under the state plan with respect to a service for which a third party is liable for payment, the person furnishing the service may not seek to collect from the individual (or any financially responsible relative or representative of that individual) payment of an amount for that service (1) if the total of the amount of the liabilities of third parties for that service is at least equal to the amount payable for that service under the plan (disregarding enrollment fees, premiums, or similar charges), or (2) in an amount which exceeds the lesser of the amount which may be collected as enrollment fees, premiums, or similar charges, or the amount by which the amount payable for that service under the plan (disregarding enrollment fees, premiums, or similar charges) exceeds the total of the amount of the liabilities of third parties for that service.<sup>10</sup> Thus, hospitals may not seek to collect money from Medicaid-eligible individuals where third parties are obliged to pay an amount at least equal to the amount that would be paid by Medicaid for the service.<sup>11</sup> A hospital lien directed at a future settlement between a tortfeasor and a Medicaid-eligible patient represents an attempted recovery against the patient, not against the tortfeasor or his or her insurer.<sup>12</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Procedural due process did not mandate that an amendment to Medicaid Cap Statute terminating counties' ability to submit overburden reimbursement claims that accrued prior to Statute's enactment be extended beyond its effective date in order to protect counties' purported vested rights in any unpaid funds, where counties had information available to pursue claims in decades leading up to amendment's passage, they were aware of State's continued efforts to close door on claims, and they continued to submit claims as amendment's effective date approached. [U.S.C.A. Const.Amend. 14](#); [McKinney's Social Services Law § 368–a](#). [County of Chemung v. Shah](#), 28 N.Y.3d 244, 44 N.Y.S.3d 326, 66 N.E.3d 1044 (2016).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 [Sweeney v. Bane](#), 996 F.2d 1384 (2d Cir. 1993).  
A Medicaid regulation establishing the maximum copayment for in-patient hospital services at 50% of the payment the state makes for the first day of in-patient hospital care did not violate the Medicaid statute requiring copayments to be "nominal in amount." [Kansas Hosp. Ass'n v. Whiteman](#), 851 F. Supp. 401 (D. Kan. 1994).
- 2 42 U.S.C.A. § 1396a(a)(10)(A), (E)(i).
- 3 42 U.S.C.A. § 1396o(a)(1).
- 4 42 U.S.C.A. § 1396o(a)(2).
- 5 42 U.S.C.A. § 1396a(a)(10)(A), (E)(i).
- 6 42 U.S.C.A. § 1396o(a)(1).
- 7 42 U.S.C.A. § 1396o(a)(2).
- 8 42 U.S.C.A. § 1396o(c) to (g).
- 9 42 U.S.C.A. § 1396o(e).

10 42 U.S.C.A. § 1396a(25)(C).  
11 Gister v. American Family Mut. Ins. Co., 2012 WI 86, 342 Wis. 2d 496, 818 N.W.2d 880 (2012).  
12 Gister v. American Family Mut. Ins. Co., 2012 WI 86, 342 Wis. 2d 496, 818 N.W.2d 880 (2012).

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## 79 Am. Jur. 2d Welfare § 41

American Jurisprudence, Second Edition | May 2021 Update

### Welfare Laws

Eric C. Surette, J.D.

## II. Federally Assisted Programs

### B. Particular Programs

#### 3. Medical or Healthcare Assistance Programs or Services

##### a. Medicaid

##### i. In General

## § 41. Recovery back or recoupment of Medicaid payments

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3550

West's Key Number Digest, [Health](#)  491 to 498

West's Key Number Digest, [States](#)  18.79

Medicaid has always been intended to be "the payer of last resort," and excess resources saved by virtue of Medicaid funds are meant to be tracked and recovered.<sup>1</sup> However, a state may seek adjustment or recovery of any medical assistance correctly paid on behalf of an individual under the state plan in only limited circumstances,<sup>2</sup> and any adjustment or recovery may be made only after the death of the individual's surviving spouse and even then only when the surviving spouse is not survived by specified persons.<sup>3</sup> To prevent impoverishment, the government is prohibited under estate recovery statutes from executing its interest when a deceased Medicaid recipient has a: (1) surviving spouse, (2) surviving child who is under 21 years old, or (3) surviving child who is blind or permanently and totally disabled, and in such circumstances, the government must delay executing its interest until the surviving spouse's death or the end of the dependency, so as to allow surviving spouses and qualified dependents to use assets, including any ownership interest in a home, to support themselves while recovery is deferred.<sup>4</sup> For purposes of a state Medicaid estate recovery law, Congress intended surviving spouses to be free to utilize the estate property during the spouses' lifetimes.<sup>5</sup> Thus, the Medicaid recovery provision cannot be construed as permitting the State to look to the estate of a spouse of a recipient of medical assistance for reimbursement of costs correctly paid on the recipient's behalf.<sup>6</sup> For purposes of a state Medicaid estate recovery law, a surviving spouse's right to be free to utilize the estate property during the spouse's lifetime includes the bona fide sale or financing of the property designed to provide the spouse with income from equity, and the state's interest in collecting the costs of Medicaid services would be extinguished in such transactions.<sup>7</sup> However, any individual who



takes property upon the death of a Medicaid recipient, through inheritance, assignment, joint tenancy, etc., or who acquires an interest in the property through gift or fraudulent transfer, takes it subject to the government's interest under the estate recovery statutes.<sup>8</sup>

**Observation:**

As a result of the federal legislation,<sup>9</sup> states have created Medicaid estate recovery programs.<sup>10</sup> Under estate recovery statutes, the government's interest in collecting the costs of Medicaid services provided to a recipient survives and continues with the recipient's property even though the government is prohibited from executing its interest until the surviving spouse's death. Estate recovery acts encompass two important policy considerations relevant to the provision of medical care: first, the government has a legitimate statutory interest in recovering the amount of correctly paid Medicaid benefits from a deceased Medicaid recipient's estate, which includes the recipient's ownership interest in property at the time of death and, second, to avoid spousal impoverishment, the legislation attempts to strike a balance between the government's statutory interest and preventing impoverishment by limiting reimbursement efforts to situations where impoverishment is no longer an issue.<sup>11</sup>

Imposing a lien on a deceased Medicaid recipient's interest in a home before the surviving spouse's death for costs of Medicaid services provided to the recipient does not constitute an impermissible "recovery" in violation of federal and state Medicaid estate recovery law provided that, to prevent spousal impoverishment, the lien provides that the government will release the lien upon the surviving spouse's demand pursuant to any bona fide sale or financial transaction involving the home and that the lien, along with any notice of lis pendens and lien proceedings, provides clear and unequivocal notice that the lien is limited to the government's interest in the property and mandatory release provisions.<sup>12</sup>

Federal Medicaid law does not preclude all recovery of Medicaid benefits correctly paid to a predeceased recipient spouse from the estate of a surviving spouse, and a state's statutory authorization to make a claim against the estate of a surviving spouse is therefore not preempted.<sup>13</sup> Although a state may not compel reimbursement of Medicaid benefits from the estate of a recipient of such benefits beyond the scope authorized by federal law, federal preemption does not preclude an estate from voluntarily paying all or part of a claim that could not be compelled.<sup>14</sup>

## CUMULATIVE SUPPLEMENT

**Cases:**

Government's collection of State's payment of Patient Protection and Affordable Care Act's (ACA) Health Insurance Providers Fee (HIPF) to managed care organizations (MCO) State contracted with to provide Medicaid services constituted final agency decision triggering six-year limitations period within which State could assert challenge, under Administrative Procedure Act (APA), to Department of Health and Human Services (HHS) rule which pertained to private actuarial certification of MCO capitation rates, and effectively required states to pay HIPF in order to receive Medicaid funds; collection of funds consummated government's decision to apply rule, established by private organization that set forth standards for private actuaries, requiring States to pay HIPF to MCOs in order to be acquire private actuarial certification, which was required to receive Medicaid funds, to states. [5 U.S.C.A. § 551 et seq.](#); [28 U.S.C.A. § 2401\(a\)](#). [Texas v. United States](#), 300 F. Supp. 3d 810 (N.D. Tex. 2018).

Under Social Welfare Act, Department of Community Health was required to provide notice of estate recovery when patient's son sought Medicaid benefits on her behalf, not when patient first enrolled in Medicaid. [M.C.L.A. § 400.112g\(3\)\(e\), \(7\)](#). [In re Keyes Estate, 310 Mich. App. 266, 871 N.W.2d 388 \(2015\)](#).

**[END OF SUPPLEMENT]**

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**Footnotes**

- 1 [Idaho Dept. Of Health & Welfare v. McCormick, 153 Idaho 468, 283 P.3d 785 \(2012\)](#), petition for cert. filed, 81 U.S.L.W. 3270 (U.S. Nov. 5, 2012).
- 2 [42 U.S.C.A. § 1396p\(b\)\(1\)](#).
- 3 [42 U.S.C.A. § 1396p\(b\)\(2\)](#).
- 4 [State Dept. of Human Resources, Welfare Div. v. Estate of Ullmer, 120 Nev. 108, 87 P.3d 1045 \(2004\)](#).
- 5 [State Dept. of Human Resources, Welfare Div. v. Estate of Ullmer, 120 Nev. 108, 87 P.3d 1045 \(2004\)](#).
- 6 [Hines v. Department of Public Aid, 221 Ill. 2d 222, 302 Ill. Dec. 711, 850 N.E.2d 148 \(2006\)](#).
- 7 [State Dept. of Human Resources, Welfare Div. v. Estate of Ullmer, 120 Nev. 108, 87 P.3d 1045 \(2004\)](#).
- 8 [State Dept. of Human Resources, Welfare Div. v. Estate of Ullmer, 120 Nev. 108, 87 P.3d 1045 \(2004\)](#).
- 9 [42 U.S.C.A. § 1396p\(b\)\(2\)](#).
- 10 [In re Barkema Trust, 690 N.W.2d 50 \(Iowa 2004\)](#); [State Dept. of Human Resources, Welfare Div. v. Estate of Ullmer, 120 Nev. 108, 87 P.3d 1045 \(2004\)](#); [In re Estate of Centorbi, 129 Ohio St. 3d 78, 2011-Ohio-2267, 950 N.E.2d 505 \(2011\)](#).
- 11 [State Dept. of Human Resources, Welfare Div. v. Estate of Ullmer, 120 Nev. 108, 87 P.3d 1045 \(2004\)](#).
- 12 [State Dept. of Human Resources, Welfare Div. v. Estate of Ullmer, 120 Nev. 108, 87 P.3d 1045 \(2004\)](#).
- 13 [In re Estate of Barg, 752 N.W.2d 52 \(Minn. 2008\)](#).
- 14 [In re Estate of Barg, 752 N.W.2d 52 \(Minn. 2008\)](#).

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## 79 Am. Jur. 2d Welfare § 42

American Jurisprudence, Second Edition | May 2021 Update

### Welfare Laws

Eric C. Surette, J.D.

## II. Federally Assisted Programs

### B. Particular Programs

#### 3. Medical or Healthcare Assistance Programs or Services

##### a. Medicaid

##### i. In General

## § 42. Recovery back or recoupment of Medicaid payments—Assets available for recoupment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Health](#)  491 to 498

West's Key Number Digest, [States](#)  18.79

Federal Medicaid law does not allow recovery of assets following the death of a recipient in which the recipient did not have an interest at the time of his or her death.<sup>1</sup>

Federal Medicaid law authorizes a state to trace assets formerly held by a Medicaid recipient and to recover from the estate of the recipient's surviving spouse assets in which the deceased recipient once had an interest.<sup>2</sup> For an interest to be traceable to and recoverable from a surviving spouse's estate following the death of a Medicaid recipient spouse, the interest must be: (1) an interest recognized by law; (2) which the Medicaid recipient held at the time of death; and (3) that resulted in a conveyance of an interest of some value to the surviving spouse that occurred as a result of the recipient's death.<sup>3</sup> A state which provided Medicaid benefits to a husband before his death could void gifts made by the wife to her children and grandchildren shortly before her own death as the transferred funds were traceable to the husband, the wife did not receive reasonably equivalent value for the transfers, and the transfers rendered her estate insolvent to pay the state's claim for Medicaid benefits paid to the husband.<sup>4</sup>

The term "estate," within the meaning of provisions of federal and state Medicaid laws authorizing the recoupment of Medicaid benefits from a deceased recipient's "estate," includes not only the personal property owned by a state Medicaid recipient at the time of death but also the recipient's interests in real property that are properly subject to the payment of the deceased recipient's debts should the recipient's personal property be insufficient to pay these debts, including the debt to the state Medicaid program.<sup>5</sup> Any real property that can be reached by the personal representative for the payment of the debts of an

insolvent estate may be reached by the probate court for the purpose of reimbursing the state Medicaid program for the properly paid medical care provided to a deceased Medicaid recipient.<sup>6</sup>

**Observation:**

Under some Medicaid estate recovery programs, consistent with the federal mandate, state statutes broaden the definition of "estate" to include assets conveyed to a survivor, heir, or assign of the deceased Medicaid recipient through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangements.<sup>7</sup>

A state was entitled to reimbursement for medical benefits paid to a claimant from the claimant's disability trust upon termination of the trust only after the trustee had paid federal and state taxes due on the trust income as it was neither reasonable nor equitable to impose personal liability on the trustee of the disability trust for such taxes if there was not enough funds to both pay the taxes and reimburse the state.<sup>8</sup> A state was entitled, upon the death of severely injured Medicaid recipients, to receive any funds remaining in the recipients' special needs trusts in order to reimburse the State for Medicaid expenses.<sup>9</sup> The antirecovery provisions of federal and state Medicaid statutes did not apply to bar a state, as the holder of a remainder interest in a supplemental needs trust established for the benefit of a disabled child, to recover medical assistance paid on the child's behalf from remaining trust assets upon the child's death.<sup>10</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

The purpose of statute precluding Department of Health and Human Services (DHHS) from pursuing recovery of medical assistance benefits pursuant to lien on recipient's home when recipient's child who provided care that delayed recipient's entry into nursing facility is still residing in home is not to reward a child's meritorious conduct with financial gain in the form of forgiveness of debt owed to the state by the recipient, but rather to protect such a child from DHHS using a lien to evict, partition, or force sale of the home while the child continues to live there. [N.H. Rev. Stat. Ann. § 167:16-a, IV\(b\)\(2\)](#). [In re Estate of McCarty, 100 A.3d 523 \(N.H. 2014\)](#).

### [END OF SUPPLEMENT]

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### Footnotes

- 1 [In re Estate of Barg, 752 N.W.2d 52 \(Minn. 2008\)](#) (a county had no claim against a Medicaid recipient's estate for recovery of benefits where the recipient retained no interest in the assets at the time of her death which were part of a probate estate or the expanded estate definition permissible under federal law).
- 2 [In re Estate of Bergman, 2004 ND 196, 688 N.W.2d 187 \(N.D. 2004\)](#).
- 3 [In re Estate of Barg, 752 N.W.2d 52 \(Minn. 2008\)](#).

- 4                   In re Estate of Bergman, 2004 ND 196, 688 N.W.2d 187 (N.D. 2004).  
5                   In re Estate of Trigg, 368 S.W.3d 483 (Tenn. 2012).  
6                   In re Estate of Trigg, 368 S.W.3d 483 (Tenn. 2012).  
7                   State Dept. of Human Resources, Welfare Div. v. Estate of Ullmer, 120 Nev. 108, 87 P.3d 1045 (2004).  
8                   Stell v. Boulder County Dept. of Social Services, 92 P.3d 910 (Colo. 2004), as modified on denial of reh'g,  
                    (July 12, 2004).  
9                   Ex parte South Carolina Dept. of Health and Human Services, 364 S.C. 527, 614 S.E.2d 609 (2005).  
10                  In re Abraham XX., 11 N.Y.3d 429, 871 N.Y.S.2d 599, 900 N.E.2d 136 (2008).

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## 79 Am. Jur. 2d Welfare § 43

American Jurisprudence, Second Edition | May 2021 Update

### Welfare Laws

Eric C. Surette, J.D.

## II. Federally Assisted Programs

### B. Particular Programs

#### 3. Medical or Healthcare Assistance Programs or Services

##### a. Medicaid

##### i. In General

### § 43. Recovery back or recoupment of Medicaid payments—From third party tortfeasor

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Health](#)  491 to 498

West's Key Number Digest, [States](#)  18.79

Under the Medicaid reimbursement scheme,<sup>1</sup> a Medicaid agency that provides medical benefits obtains all of the rights that the recipient has as against a third party to recover for medical expenses, including the ability to immediately pursue those claims against the third party.<sup>2</sup> However, federal statutes that govern the Medicaid program do not require a state to pursue a third-party tortfeasor directly for the reimbursement of Medicaid funds expended on an accident victim's behalf.<sup>3</sup> A state is not required to pay a part of the cost of collecting reimbursement from a third-party tortfeasor who causes injury to a Medicaid recipient even though the State is entitled to recoup the cost of any medical assistance actually paid to the recipient from any tort recovery the recipient receives.<sup>4</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

A Medicaid recipient should be afforded the opportunity to seek the reduction of a Medicaid lien amount by demonstrating, with evidence, that the lien amount exceeds the amount recovered for medical expenses from a third party. Medicaid Act, § 1917(a)(1), [42 U.S.C.A. § 1396p\(a\)\(1\)](#); [West's F.S.A. § 409.910\(11\)\(f\)](#). [Davis v. Roberts](#), 130 So. 3d 264 (Fla. 5th DCA 2013).

**[END OF SUPPLEMENT]**

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Footnotes

- 1 42 U.S.C.A. § 1396a(a)(25)(A), (B).
- 2 Gold ex rel. Gold v. United Health Services Hospitals, Inc., 95 N.Y.2d 683, 723 N.Y.S.2d 117, 746 N.E.2d 172 (2001).
- 3 State v. Peters, 287 Conn. 82, 946 A.2d 1231 (2008).
- 4 Richards v. Georgia Dept. Of Community Health, 278 Ga. 757, 604 S.E.2d 815 (2004).

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## 79 Am. Jur. 2d Welfare § 44

American Jurisprudence, Second Edition | May 2021 Update

### Welfare Laws

Eric C. Surette, J.D.

## II. Federally Assisted Programs

### B. Particular Programs

#### 3. Medical or Healthcare Assistance Programs or Services


##### a. Medicaid

##### ii. Eligibility for Benefits

## § 44. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Health](#)  467 to 471(2)

### Forms

[Am. Jur. Pleading and Practice Forms, Welfare Laws § 10](#) (Petition or application—For writ of mandamus—To enforce applicant's rights under Medicaid program)

[Am. Jur. Pleading and Practice Forms, Welfare Laws § 21](#) (Answer—Defense—By welfare department—Termination of government assistance (food stamp eligibility; Medicaid) based upon disqualifying income)

### Law Reviews and Other Periodicals

Rao, Note, "[Making Medical Assistance Available](#)": Enforcing The Medicaid Act's Availability Provision Through § 1983 Litigation, 109 Colum. L. Rev. 1440 (2009)



A state plan must cover individuals receiving aid or assistance under specified federally aided state programs, including but not limited to those for the aged, blind, disabled, and needy families with children, while persons not meeting the income requirements for such aid or assistance may also be covered if otherwise eligible under the statute.<sup>1</sup> An individual becomes eligible for Medicaid if he or she meets the participating state's criteria.<sup>2</sup> In fact, an individual is entitled to Medicaid if the person fulfills the criteria established by the state in which the person lives.<sup>3</sup>

**Practice Tip:**

When a trust beneficiary makes an application for participation in Medicaid, the Medicaid-eligibility-review rules in effect at the time the application is filed govern the applicant's eligibility.<sup>4</sup>

The Medicaid scheme leaves to participating states the task of fashioning reasonable standards for determining eligibility which provide for reasonable evaluation of any available income or resources.<sup>5</sup> To receive Medicaid, a person must qualify as either "categorically" or "medically" needy: a person is "categorically needy" if the person is eligible for other specified federal assistance programs, and a person is "medically needy" if the person incurs medical expenses that reduce his or her income to roughly the level of those who are categorically needy.<sup>6</sup> To qualify as "medically needy" for Medicaid purposes, a person may have income no higher than a defined threshold and may own assets of no more than a defined value, and if the assets of a Medicaid applicant and his or her spouse exceed the qualifying threshold, they must spend down their assets until they are at or below the qualifying threshold.<sup>7</sup>

**Observation:**

The state agency charged with administering a state Medicaid program is the sole entity that may determine whether a Medicaid applicant is eligible for Medicaid.<sup>8</sup>

Eligibility for Medicaid is based on income.<sup>9</sup> In general, the courts construe Medicaid statutes in favor of coverage for the recipient<sup>10</sup> although an applicant for Medicaid benefits must prove eligibility.<sup>11</sup> A Medicaid applicant has the responsibility to provide information sufficient to establish eligibility.<sup>12</sup>

**Practice Tip:**

The Medicaid program is not to be used as an estate planning tool, and an applicant may not exploit Medicaid benefits while sheltering wealth to eventually benefit relatives as this would violate the Medicaid program's objective.<sup>13</sup>

A Medicaid applicant's participation in the program involves a two-phase process: (1) determining medical eligibility and financial eligibility based on the applicant's income and resources, and (2) determining the extent of assistance to which the applicant is eligible based on another calculation of income.<sup>14</sup>

The Secretary of Health and Human Services has broad authority to promulgate regulations defining eligibility requirements for Medicaid.<sup>15</sup>

In the arena of Medicaid, a state legislature is within its authority, absent some constitutional limitation, to revise eligibility rules as it balances public resources against public needs.<sup>16</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Medicaid applicant rebutted presumption, for purposes of determining eligibility for Medicaid benefits, that applicant's transfers of funds to her son and daughter, two to three years before her institutionalization for dementia, were motivated, in part if not in whole, by anticipation of future need to qualify for medical assistance; at time of transfers and in years preceding applicant's need for nursing home care, she was in good health and living independently, transfers were gifts to her relatives, and applicant still had more than \$250,000, not including Social Security benefits, following transfers. Medicaid Act, § 1917(c)(1)(A, B, E), (c)(2)(C)(i, iii), [42 U.S.C.A. § 1396p\(c\)\(1\)\(A, B, E\), \(c\)\(2\)\(C\)\(i, iii\)](#); [McKinney's Social Services Law § 366\(5\)\(e\)\(1\)\(vi\), \(e\)\(3\), \(e\)\(4\)\(iii\)](#). [Sandoval v. Shah](#), 131 A.D.3d 1254, 2015 WL 5707294 (2d Dep't 2015).

While a state providing federally subsidized medical assistance to low-income individuals and families may place appropriate limits on a service based on such criteria as medical necessity or on utilization control procedures, these limits must be reasonable and consistent with the objectives of the Medicaid Act. Social Security Act §§ 1900, 1946, [42 U.S.C.A. §§ 1396-1396w-5](#). [Flack v. Wisconsin Department of Health Services](#), 395 F. Supp. 3d 1001 (W.D. Wis. 2019).

## [END OF SUPPLEMENT]

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### Footnotes

<sup>1</sup> [42 U.S.C.A. § 1396a\(a\)\(10\)](#).

In structuring the Medicaid program, Congress chose to direct the limited funds available to the most impoverished people. *Hofer v. Montana Dept. of Public Health and Human Services*, 2005 MT 302, 329 Mont. 368, 124 P.3d 1098 (2005).

*Timm v. Montana Dept. of Public Health and Human Services*, 2008 MT 126, 343 Mont. 11, 184 P.3d 994 (2008).

*Schweiker v. Gray Panthers*, 453 U.S. 34, 101 S. Ct. 2633, 69 L. Ed. 2d 460 (1981); *In re Huff*, 154 N.H. 414, 910 A.2d 1287 (2006).

*Pack v. Osborn*, 117 Ohio St. 3d 14, 2008-Ohio-90, 881 N.E.2d 237 (2008).

*Gillmore v. Illinois Dept. of Human Services*, 218 Ill. 2d 302, 300 Ill. Dec. 78, 843 N.E.2d 336 (2006).

*In re Estate of Barg*, 752 N.W.2d 52 (Minn. 2008).

*In re Estate of Barg*, 752 N.W.2d 52 (Minn. 2008).

The Medicaid eligibility rules require that the applicant actually dispose of and "exhaust" any excess assets before he or she will be eligible for benefits. *Christensen v. North Dakota Dept. of Human Services*, 2011 ND 77, 796 N.W.2d 390 (N.D. 2011).

*Arkansas Dept. of Health and Human Services v. Smith*, 370 Ark. 490, 262 S.W.3d 167 (2007).

*Cordall v. State ex rel. Departments of Veterans Affairs and Social & Health Services*, 96 Wash. App. 415, 980 P.2d 253 (Div. 2 1999).

One goal of the Medicare Catastrophic Coverage Act was to preclude couples who possessed substantial resources from qualifying for Medicaid. *Cleary ex rel. Cleary v. Waldman*, 167 F.3d 801 (3d Cir. 1999).

*TLC Home Health Care, L.L.C. v. Iowa Dept. of Human Services*, 638 N.W.2d 708 (Iowa 2002).

*Brewer v. Schalansky*, 278 Kan. 734, 102 P.3d 1145 (2004); *Christensen v. North Dakota Dept. of Human Services*, 2011 ND 77, 796 N.W.2d 390 (N.D. 2011).

*Christensen v. North Dakota Dept. of Human Services*, 2011 ND 77, 796 N.W.2d 390 (N.D. 2011).

*Allen v. Wessman*, 542 N.W.2d 748 (N.D. 1996).

*Timm v. Montana Dept. of Public Health and Human Services*, 2008 MT 126, 343 Mont. 11, 184 P.3d 994 (2008); *Kaspari v. Olson*, 2011 ND 124, 799 N.W.2d 348 (N.D. 2011).

*Timm v. Montana Dept. of Public Health and Human Services*, 2008 MT 126, 343 Mont. 11, 184 P.3d 994 (2008).

*Pack v. Osborn*, 117 Ohio St. 3d 14, 2008-Ohio-90, 881 N.E.2d 237 (2008).

## 79 Am. Jur. 2d Welfare § 45

American Jurisprudence, Second Edition | May 2021 Update

### Welfare Laws

Eric C. Surette, J.D.

## II. Federally Assisted Programs

### B. Particular Programs

#### 3. Medical or Healthcare Assistance Programs or Services


##### a. Medicaid

##### ii. Eligibility for Benefits

## § 45. Available resources

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Health](#)  471(1) to 471(8)

### A.L.R. Library

[Eligibility for welfare benefits, under maximum-assets limitations, as affected by expenditures or disposal of assets, 19 A.L.R.4th 146](#)

### Forms

[Am. Jur. Pleading and Practice Forms, Welfare Laws § 21](#) (Answer—Defense—By welfare department—Termination of government assistance (food stamp eligibility; Medicaid) based upon disqualifying income)

### Law Reviews and Other Periodicals

Rao, Note, "Making Medical Assistance Available": Enforcing The Medicaid Act's Availability Provision Through § 1983 Litigation, 109 Colum. L. Rev. 1440 (2009)

Under federal law, a state participating in the Medicaid program must establish resource standards for the determination of eligibility, and these standards must take into account only such income and resources as are available to the applicant or recipient as determined in accordance with standards prescribed by the Secretary of Health and Human Services.<sup>1</sup> Eligibility for Medicaid is dependent upon a determination of whether an applicant has available resources, and coverage will be denied if an applicant's resources exceed a statutory ceiling.<sup>2</sup> A person must lack sufficient assets to meet the cost of necessary medical care and services to be eligible for Medicaid benefits.<sup>3</sup>

Medicaid is intended to be a payor of last resort, and an applicant's other available resources must be exhausted before the applicant is eligible to have Medicaid pay for care.<sup>4</sup> However, only resources that are available and countable are considered in determining Medicaid eligibility.<sup>5</sup> All actually available assets of a Medicaid applicant must be considered in establishing eligibility for Medicaid, and assets are actually available when the applicant has a legal interest in a liquidated sum and has the legal ability to make the sum available for support, maintenance, or medical care.<sup>6</sup> An asset need not be in hand to be "actually available," in consideration of eligibility for Medicaid benefits, and an applicant for benefits may be required to initiate appropriate legal action to make the asset available.<sup>7</sup>

A state Medicaid statute that considered a claimant's resources to be unavailable for purposes of Medicaid eligibility if there was a legal impediment that precluded the disposal of the resource unless the claimant failed to pursue reasonable steps to overcome the legal impediment did not conflict with federal law.<sup>8</sup>

**Practice Tip:**

The "actually available" requirement concerning Medicaid eligibility must be interpreted reasonably, and the focus is on the applicant's actual and practical ability to make an asset available as a matter of fact, not legal fiction. Determining whether an asset is actually available for purposes of Medicaid eligibility is largely a fact-specific inquiry depending on the circumstances of each case.<sup>9</sup> A Medicaid applicant has the burden of proving an asset is not actually available.<sup>10</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Funds in workers' compensation Medicare set-aside account (WCMSA) did not constitute a countable resource for purposes of determining recipient's eligibility for Medicaid, because her use of the funds for her support and maintenance were subject to legal restrictions pursuant to a legally binding agreement, regardless of whether the funds were restricted by the bank in

which they were deposited; Industrial Commission order approving settlement agreement setting up the WCMSA was a legally binding agreement which specifically precluded recipient from using the funds for her general support and maintenance, when, if she did, she could be held in contempt for violating the terms of the Commission's orders. *N.C. Gen. Stat. Ann. §§ 97-17, 97-80(g)*; 20 C.F.R. § 416.1201(a)(1). *Williford v. North Carolina Department of Health and Human Services*, 792 S.E.2d 843 (N.C. Ct. App. 2016).

Medicaid is for individuals receiving nursing home care services that are in fact poor and have not transferred assets that should be used to purchase the needed services before Medicaid benefits are made available; it is not to be used as an estate planning tool. *In re Estate of Shipman*, 2013 SD 42, 832 N.W.2d 335 (S.D. 2013).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 [Wilson v. Nebraska Dept. of Health and Human Services](#), 272 Neb. 131, 718 N.W.2d 544 (2006).
- 2 [Timm v. Montana Dept. of Public Health and Human Services](#), 2008 MT 126, 343 Mont. 11, 184 P.3d 994 (2008).
- 3 [Oyloe v. North Dakota Dept. of Human Services](#), 2008 ND 67, 747 N.W.2d 106 (N.D. 2008).
- 4 [Smalley v. Nebraska Dept. of Health and Human Services](#), 283 Neb. 544, 811 N.W.2d 246 (2012), petition for cert. filed, 81 U.S.L.W. 3221 (U.S. Oct. 11, 2012); [Kaspari v. Olson](#), 2011 ND 124, 799 N.W.2d 348 (N.D. 2011).
- 5 [Micone v. Department of Public Health and Human Services](#), 2011 MT 178, 361 Mont. 258, 258 P.3d 403 (2011).  
A Medicaid applicant's interest in two parcels of real property and in the proceeds from the sales of those properties were "actually available assets" that disqualified the applicant from Medicaid eligibility during a five-month period beginning when the parcels became the subject of a purchase agreement through the period of time after closing on the parcels that the applicant held the sale proceeds in his personal checking account, as real property subject to a pending purchase agreement was an available asset, the sale proceeds were not transferred directly to the nursing home facility in which the applicant resided, pursuant to an alleged oral agreement between the applicant's attorney-in-fact and the facility, but were placed unrestricted in the applicant's personal checking account and held there for over two months before most of proceeds were paid to the facility. [Christensen v. North Dakota Dept. of Human Services](#), 2011 ND 77, 796 N.W.2d 390 (N.D. 2011).
- 6 [Roberts v. North Dakota Dept. of Human Services](#), 2005 ND 50, 692 N.W.2d 922 (N.D. 2005).
- 7 [Makedonsky v. North Dakota Dept. of Human Services](#), 2008 ND 49, 746 N.W.2d 185 (N.D. 2008).  
Just because a Medicaid applicant has the ability to sue another to obtain an asset does not necessarily mean the asset is actually available, for purposes of determining eligibility; rather, courts look to whether the applicant has a colorable legal action to obtain assets through reasonable legal means. [Reinholdt v. North Dakota Dept. of Human Services](#), 2009 ND 17, 760 N.W.2d 101 (N.D. 2009).
- 8 [Brewer v. Schalansky](#), 278 Kan. 734, 102 P.3d 1145 (2004).
- 9 [Dahly v. Anderson](#), 2012 ND 183, 820 N.W.2d 719 (N.D. 2012).
- 10 [Christensen v. North Dakota Dept. of Human Services](#), 2011 ND 77, 796 N.W.2d 390 (N.D. 2011).

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## 79 Am. Jur. 2d Welfare § 46

American Jurisprudence, Second Edition | May 2021 Update

### Welfare Laws

Eric C. Surette, J.D.

## II. Federally Assisted Programs

### B. Particular Programs

#### 3. Medical or Healthcare Assistance Programs or Services

##### a. Medicaid

##### ii. Eligibility for Benefits

## § 46. Available resources—Trusts

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Health⚙️471\(6\)](#)

### A.L.R. Library

[Eligibility for welfare benefits as affected by claimant's status as trust beneficiary, 21 A.L.R.4th 729](#)

A Medicaid-qualifying trust is considered an available asset for Medicaid eligibility purposes.<sup>1</sup> An irrevocable trust established by an individual or his or her spouse is considered a Medicaid qualifying trust if the trustee could exercise any discretion in order to make payments from trust principal or income to the beneficiary.<sup>2</sup> The amount of a Medicaid qualifying trust considered available to an applicant for purposes of determining eligibility for Medicaid benefits is the maximum amount of payments that may be permitted under the terms of the trust to be distributed to the grantor, assuming the full exercise of discretion by the trustee or trustees for the distribution of the maximum amount to the grantor.<sup>3</sup>

Determining the nature of the trust in which a Medicaid applicant has an equitable interest is a necessary first step in determining whether the trust assets are countable for purposes of a Medicaid-eligibility determination.<sup>4</sup>

A Medicaid applicant cannot be considered to have established a trust for purposes of the restrictions imposed by the statute on an applicant's resource level for Medicaid assistance if the trust was established by a will.<sup>5</sup>

The 1993 amendment to the Medicaid Act,<sup>6</sup> which expanded the types of trusts that could be considered to preclude applicants from Medicaid eligibility, applies only to trusts established after August 10, 1993, the effective date of the enactment.<sup>7</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Contents of a special needs trust may be excluded from the disabled person's income calculation only if the trust satisfies certain specific requirements, the most important one of which, recognized at both the state and federal level, is that the state must receive all amounts remaining in the trust upon the death of the trust beneficiary up to an amount equal to the total medical assistance paid on behalf of the individual under a state plan. Medicaid Act, § 1917(d)(4)(A), 42 U.S.C.A. § 1396p(d)(4)(A); N.J.A.C. 10:71–4.11(g)(1)(xii). *J.B. v. W.B.*, 215 N.J. 305, 73 A.3d 405 (2013).

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### Footnotes

- 1 *Oyloe v. North Dakota Dept. of Human Services*, 2008 ND 67, 747 N.W.2d 106 (N.D. 2008).
- 2 *Thorson v. Nebraska Dept. of Health and Human Services*, 274 Neb. 322, 740 N.W.2d 27 (2007).
- 3 *Thorson v. Nebraska Dept. of Health and Human Services*, 274 Neb. 322, 740 N.W.2d 27 (2007).
- 4 *Pack v. Osborn*, 117 Ohio St. 3d 14, 2008-Ohio-90, 881 N.E.2d 237 (2008).
- 5 *Pohlmann ex rel. Pohlmann v. Nebraska Dept. of Health and Human Services*, 271 Neb. 272, 710 N.W.2d 639 (2006).
- 6 42 U.S.C.A. § 1396p(d).
- 7 *Wilson v. Nebraska Dept. of Health and Human Services*, 272 Neb. 131, 718 N.W.2d 544 (2006).

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## 79 Am. Jur. 2d Welfare § 47

American Jurisprudence, Second Edition | May 2021 Update

### Welfare Laws

Eric C. Surette, J.D.

## II. Federally Assisted Programs

### B. Particular Programs

#### 3. Medical or Healthcare Assistance Programs or Services

##### a. Medicaid

##### ii. Eligibility for Benefits

## § 47. Available resources—Transfers of property

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Health](#)  471(4)

### A.L.R. Library

[Validity of statutes or regulations denying welfare benefits to claimants who transfer property for less than its full value, 24 A.L.R.4th 215](#)

A state Medicaid plan must provide that if an institutionalized individual or the spouse of such an individual or, at the option of a State, a noninstitutionalized individual or the spouse of such an individual disposes of assets for less than fair market value on or after the statutorily proscribed look-back date period, the individual is ineligible for medical assistance for specified services during a time period mandated by statute.<sup>1</sup> Thus, if a potential Medicaid recipient transfers assets below fair market value within a certain period of time before eligibility, the recipient is deemed ineligible for benefits for a time period mandated by statute.<sup>2</sup> This provision prevents people who are not needy from becoming eligible for Medicaid by transferring their assets away.<sup>3</sup>

However, the timely transfer of property, even if done to achieve Medicaid eligibility status, is permissible.<sup>4</sup> A property transfer should not be viewed with skepticism and disapproval merely because it may precede Medicaid eligibility.<sup>5</sup>

The concepts of transfer and availability of assets are not mutually exclusive for purposes of determining eligibility for Medicaid benefits, and if there remains (1) an ownership interest and (2) the authority or power to liquidate the property or the applicant's share of the property, the applicant's share of the property is a resource of the applicant regardless of when the partial transfer occurred.<sup>6</sup>

Medicaid statutes and regulations create a caregiver child exemption, which allows the transfer of a family home to a caregiver child under certain conditions without affecting the parent's eligibility for Medicaid benefits and do not limit its application to only caregiver children who provided care without being paid.<sup>7</sup> The statute setting forth the caregiver child exemption regarding Medicaid eligibility<sup>8</sup> expresses a clear federal policy to encourage the child of an elderly disabled parent to provide live-in care to allow the parent to remain at home rather than in a nursing care facility and to allow transfer of the family home to that child under certain conditions without affecting the parent's eligibility for Medicaid benefits.<sup>9</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Transfers totaling \$118,000 over the course of less than three months by spouse of applicant for medical assistance to their children and grandchildren were made in order to qualify applicant for medical assistance to pay for nursing home care, despite contentions that transfers were gifts done for estate-planning purposes and that applicant's seizure requiring nursing home care was unanticipated medical event; applicant, whose health had been deteriorating, required constant care after suffering a stroke years before seizure occurred, applicant's need for long term care was not unforeseeable, and result of transfers was to render ailing and elderly applicant without any means of paying for nursing home care. [55 Pa.Code § 178.104. Colonial Park Care Center, LLC v. Department of Public Welfare, 123 A.3d 1094 \(Pa. Commw. Ct. 2015\).](#)

Department of Health's Medicaid rule governing the responsibility of a contestant for his or her attorney fees and costs did not preclude the payment of contestant's attorney fees by her sons from being treated as a return of assets that could have then been applied to reduce the length of the penalty period she incurred for the transfer of assets during the look-back period for less than fair market value; the rule, by its plain terms, did no more than specify it was the contestant, and not the Department, that would be responsible for the contestant's attorney fees and costs, and did not refer to transfer penalties or the return of assets to a contestant. [Wyo. Stat. Ann. §§ 42-2-402\(a\), 42-2-402\(e\)\(iii\). Anderson v. State ex rel. Department of Health, 2018 WY 135, 430 P.3d 1162 \(Wyo. 2018\).](#)

## [END OF SUPPLEMENT]

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### Footnotes

- 1 [42 U.S.C.A. § 1396p\(c\)\(1\)\(A\).](#)
- 2 [In re Estate of Barg, 752 N.W.2d 52 \(Minn. 2008\).](#)
- 3 [In re Estate of Barg, 752 N.W.2d 52 \(Minn. 2008\).](#)
- 4 [H.K. v. State, Dept. of Human Services, Div. of Medical Assistance and Health Services, 184 N.J. 367, 877 A.2d 1218 \(2005\).](#)
- 5 [H.K. v. State, Dept. of Human Services, Div. of Medical Assistance and Health Services, 184 N.J. 367, 877 A.2d 1218 \(2005\).](#)
- 6 [Brewer v. Schalansky, 278 Kan. 734, 102 P.3d 1145 \(2004\).](#)
- 7 [Dahly v. Anderson, 2012 ND 183, 820 N.W.2d 719 \(N.D. 2012\).](#)

8 42 U.S.C.A. § 1396p(c)(2)(A)(iv).  
9 Dahly v. Anderson, 2012 ND 183, 820 N.W.2d 719 (N.D. 2012).

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## 79 Am. Jur. 2d Welfare § 48

American Jurisprudence, Second Edition | May 2021 Update

### Welfare Laws

Eric C. Surette, J.D.

## II. Federally Assisted Programs

### B. Particular Programs

#### 3. Medical or Healthcare Assistance Programs or Services

##### a. Medicaid

##### ii. Eligibility for Benefits

## § 48. Available resources—Marital assets

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Health⚙️471\(5\)](#)

### A.L.R. Library

[Application of "Spousal Impoverishment Provisions" of Medicare Catastrophic Coverage Act \(42 U.S.C.A. s 1396r-5\), 186 A.L.R. Fed. 437](#)

When determining the eligibility of a married person to receive Medicaid, states consider the assets of both a husband and wife as available to the spouse requesting benefits.<sup>1</sup> For the purpose of Medicaid eligibility, an "institutionalized spouse" is an individual who is in a medical institution or nursing facility and is married to an individual who is not in a medical institution or nursing facility, while the community spouse is the spouse of the institutionalized spouse.<sup>2</sup> The goal of the Medicare Catastrophic Coverage Act (MCCA)<sup>3</sup> is to provide sufficient income and resources for a community spouse while also ensuring that a fair share of the couple's resources are employed for the care of an institutionalized spouse.<sup>4</sup> Because Medicaid serves the purpose of providing necessary medical services for both the indigent and the elderly, a related goal of the MCCA is to preclude couples who possessed substantial resources from qualifying for Medicaid.<sup>5</sup>

**Observation:**

States are given large discretion with respect to the establishment of both the needs and resource allowances of an institutionalized Medicaid recipient's community spouse, and courts should not hinder a state's efforts to strike its own balance in the implementation of the Medicaid Act.<sup>6</sup>

A community spouse of a Medicaid recipient is entitled to an allowance of income and assets designated for his or her needs that is not considered available to pay for the recipient spouse's medical care, and the recipient spouse has the right to transfer assets, including an interest in the homestead, to his or her community spouse.<sup>7</sup> In determining how much of an institutionalized spouse's posteligibility income must go towards health care costs once Medicaid eligibility is established, the community spouse keeps all of his or her income, while the institutionalized spouse must pay all of his or her posteligibility income towards health care costs, save for the following: (1) a personal needs allowance, (2) incurred medical expenses and insurance premiums, (3) maintenance needs for the family, and (4) the community spouse income maintenance allowance.<sup>8</sup> The provisions of the MCCA are not meant to enable the community spouse to maintain his or her prior life-style and have the public subsidize it, as instead, the narrow purpose of the legislation providing for the Medicaid minimum monthly maintenance needs allowance is to protect the community spouse from financial disaster when a primary income-providing spouse becomes institutionalized.<sup>9</sup> The Medicaid minimum monthly maintenance needs allowance provisions of the MCCA are, in general, designed to insure that the community spouse retains necessary, but not excessive, income and assets, which do not need to be depleted to make the institutionalized spouse eligible for Medicaid as Congress sought to protect community spouses from "pauperization" while preventing financially secure couples from obtaining Medicaid assistance.<sup>10</sup>

**CUMULATIVE SUPPLEMENT**

**Cases:**

Term individual in statutory provision exempting an individual's non-homestead life estate assets from being spent down to reach the asset limit for a medical assistance applicant meant only the applicant, and thus the value of community spouse's non-homestead life estate assets was includable when totaling assets to determine the community spouse asset allowance; statute as a whole pertained to applicants for medical assistance and specifically defined the term individual when used in a different manner, and provision specifically stated that it applied only to determining eligibility for medical assistance and did not apply to valuation of assets of either the institutional spouse or the community spouse for purposes of calculation of the community spouse asset allowance. [Minn. Stat. Ann. §§ 256B.056\(4a\), 256B.059. In re Schmalz, 945 N.W.2d 46 \(Minn. 2020\).](#)

**[END OF SUPPLEMENT]**

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Footnotes

- 1 In re Estate of Barg, 752 N.W.2d 52 (Minn. 2008).
- 2 Estate of Gross v. North Dakota Dept. of Human Services, 2004 ND 190, 687 N.W.2d 460 (N.D. 2004).
- 3 42 U.S.C.A. § 1396r-5(c).
- 4 Stafford v. Idaho Dept. of Health & Welfare, 145 Idaho 530, 181 P.3d 456 (2008).
- 5 Stafford v. Idaho Dept. of Health & Welfare, 145 Idaho 530, 181 P.3d 456 (2008).
- 6 Ruck v. Novello, 295 F. Supp. 2d 258 (W.D. N.Y. 2003).
- 7 In re Estate of Barg, 752 N.W.2d 52 (Minn. 2008).
- 8 Timm v. Montana Dept. of Public Health and Human Services, 2008 MT 126, 343 Mont. 11, 184 P.3d 994 (2008).
- 9 Balzarini v. Suffolk County Dept. of Social Services, 16 N.Y.3d 135, 919 N.Y.S.2d 474, 944 N.E.2d 1113 (2011).
- 10 In re Estate of Tomeck, 8 N.Y.3d 724, 840 N.Y.S.2d 550, 872 N.E.2d 236 (2007).

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## 79 Am. Jur. 2d Welfare § 49

American Jurisprudence, Second Edition | May 2021 Update

### Welfare Laws

Eric C. Surette, J.D.

## II. Federally Assisted Programs

### B. Particular Programs

#### 3. Medical or Healthcare Assistance Programs or Services

##### b. Imposition of Penalties; Review Thereof

## § 49. Civil penalties

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [HealthKey 489](#)

### A.L.R. Library

[Imposition of civil penalties, under state statute, upon medical practitioner for fraud in connection with claims under medicaid, medicare, or similar welfare programs for providing medical services, 32 A.L.R.4th 671](#)

### Treatises and Practice Aids

[Federal Procedure, L. Ed. §§ 42:457 to 42:472](#)

The Secretary of Health and Human Services may assess civil penalties against any person, including an organization, agency, or other entity, but excluding a beneficiary, that improperly files an application for payments for items and services under a federal health care program.<sup>1</sup> Likewise, the Secretary may assess civil penalties against a hospital or a critical access hospital that knowingly makes a payment, directly or indirectly, to a physician as an inducement to reduce or limit certain services,<sup>2</sup> and

against any physician who knowingly accepts receipt of such a payment.<sup>3</sup> A proceeding to impose penalties and assessments for the fraudulent submission of a claim is a civil proceeding, not a criminal or quasi-criminal proceeding, and therefore does not violate the double jeopardy clause.<sup>4</sup>

**Observation:**

The purpose behind allowing the imposition of penalties and assessments for the fraudulent submission of claims is to make the government whole for moneys paid on fraudulent submissions and the cost of investigating such fraudulent submissions.<sup>5</sup>

## CUMULATIVE SUPPLEMENT

**Statutes:**

[42 U.S.C.A. § 1320a-7a\(b\)\(1\)](#), as amended effective April 16, 2015, provides that the Secretary may assess civil penalties against a hospital or a critical access hospital that knowingly makes a payment, directly or indirectly, to a physician as an inducement to reduce or limit certain medically necessary services.

32 C.F.R. Pt. 200 ([32 C.F.R. §§ 200.100 to 200.203](#)), as added effective October 28, 2020, to implement [42 U.S.C.A. § 1320a-7a](#), provides for the imposition of civil money penalties ([32 C.F.R. §§ 200.200 to 200.220](#)) and assessments against persons who have committed an act or omission that violates one or more provisions of this part ([32 C.F.R. §§ 200.300 to 200.320](#)), and sets forth the appeal rights of persons subject to a penalty and assessment ([32 C.F.R. §§ 200.2001 to 200.2023](#)).

## [END OF SUPPLEMENT]

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**Footnotes**

- |   |   |
|---|---|
| 1 | <a href="#">42 U.S.C.A. § 1320a-7a(a)</a> .                             |
| 2 | <a href="#">42 U.S.C.A. § 1320a-7a(b)(1)</a> .                          |
| 3 | <a href="#">42 U.S.C.A. § 1320a-7a(b)(2)</a> .                          |
| 4 | <a href="#">Bernstein v. Sullivan</a> , 914 F.2d 1395 (10th Cir. 1990). |
| 5 | <a href="#">Bernstein v. Sullivan</a> , 914 F.2d 1395 (10th Cir. 1990). |

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## 79 Am. Jur. 2d Welfare § 50

American Jurisprudence, Second Edition | May 2021 Update

### Welfare Laws

Eric C. Surette, J.D.

## II. Federally Assisted Programs

### B. Particular Programs

#### 3. Medical or Healthcare Assistance Programs or Services

##### b. Imposition of Penalties; Review Thereof

## § 50. Civil penalties—Review

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Health](#)  [489, 507](#)

### A.L.R. Library

[Imposition of civil penalties, under state statute, upon medical practitioner for fraud in connection with claims under medicaid, medicare, or similar welfare programs for providing medical services, 32 A.L.R.4th 671](#)

### Treatises and Practice Aids

[Federal Procedure, L. Ed. §§ 42:467 to 42:470](#)

Any person adversely affected by a determination of the Secretary of Health and Human Services imposing a civil penalty may obtain a review of such determination in the United States Court of Appeals for the circuit in which the person resides, or in which the claim was presented, by filing in such court a written petition requesting that the determination be modified or set aside.<sup>1</sup> Time limitations for bringing an appeal and procedures for obtaining review are provided for by statute.<sup>2</sup>

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Footnotes

1 42 U.S.C.A. § 1320a-7a(e).

2 42 U.S.C.A. § 1320a-7a(e).

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## 79 Am. Jur. 2d Welfare § 51

American Jurisprudence, Second Edition | May 2021 Update

### Welfare Laws

Eric C. Surette, J.D.

## II. Federally Assisted Programs

### B. Particular Programs


#### 3. Medical or Healthcare Assistance Programs or Services

##### b. Imposition of Penalties; Review Thereof

## § 51. Criminal penalties

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Public Assistance](#)  73

West's Key Number Digest, [States](#)  18.79

### A.L.R. Library

[Federal Criminal Prosecution Against Medical Practitioner for Fraud in Connection with Claims Under Medicaid, Medicare, or Similar Welfare Program Providing Medical Services](#), 66 A.L.R. Fed. 2d 1

[Illegal remuneration under Medicare anti-kickback statute \(Social Security Act sec. 1128B\) \(42 U.S.C.A. secs. 1320a-7b\)](#), 132 A.L.R. Fed. 601

Under the Medicare Anti-kickback Act, criminal penalties are provided for the following acts involving federal health care programs:

- (1) fraudulent acts committed in the course of obtaining aid under any such plan;
- (2) soliciting or receiving illegal remunerations;
- (3) making false statements or representations with respect to condition or operation of institutions;

(4) illegal patient admittance and retention practices; and

(5) violation of assignment terms.<sup>1</sup>

The section proscribing receiving prohibited kickbacks<sup>2</sup> has been upheld against attack that it is void for vagueness both on its face<sup>3</sup> and as applied.<sup>4</sup> However, the provision prohibiting the imposition of a criminal penalty for counseling individuals to dispose of assets in order to become eligible for Medicaid<sup>5</sup> has been found to violate the First Amendment rights of the members of a state bar association even though the Attorney General stated that the Department of Justice would not enforce the provision.<sup>6</sup>

**Practice Tip:**

A person need not have actual knowledge of 42 U.S.C.A. § 1320a-7b or specific intent to commit a violation of that statute.<sup>7</sup>

The antikickback provision<sup>8</sup> prohibits (1) any person or entity from knowingly and willfully making or accepting payment or remuneration for referring patients for federally funded medical services, and (2) the offer or payment of remuneration to induce such referrals.<sup>9</sup> "Willfully" as used in the antikickback provision does not require knowledge that the arrangement for referrals to a treatment program violated the statute but only requires knowledge that the conduct was unlawful, and one would not expect the kickbacks to be legal, and they were malum in se rather than malum prohibitum.<sup>10</sup> A person who offers or pays remuneration to another person violates the antikickback provision<sup>11</sup> so long as one purpose of the offer or payment is to induce Medicaid patient referrals,<sup>12</sup> and showing that the inducement of or return for referrals was the primary purpose behind such payment or receipt is unnecessary.<sup>13</sup> Under the "discount exception,"<sup>14</sup> both buyer-providers and seller-suppliers are required to "properly disclose and appropriately reflect" the reduction in price offered or received for Medicaid reimbursable goods or services in order to avoid criminal liability under the antikickback provision.<sup>15</sup>

A state Medicaid antikickback statute was preempted by the federal antikickback statute<sup>16</sup> and was thus unconstitutional under the Supremacy Clause of the Federal Constitution where the state statute presented an obstacle to the accomplishment of the purposes of the federal statute in that it criminalized conduct that the federal law specifically intended to be lawful and shielded from prosecution, as the federal statute included a heightened mens rea requirement and safe harbor provisions, as key elements in fulfilling the purpose of the federal statute, namely, to outlaw unethical health care referrals, while the state statute permitted convictions on the basis of negligent conduct and contained no safe harbor provisions.<sup>17</sup>

In addition to the penalties provided for in the statute on criminal penalties for acts involving federal health care programs<sup>18</sup> or in the statute providing for civil monetary penalties for wrongful claims,<sup>19</sup> a claim that includes items or services resulting from a violation of 42 U.S.C.A. § 1320a-7b constitutes a false or fraudulent claim for purposes of 31 U.S.C.A. §§ 3721 et seq. (relating to claims against the United States government).<sup>20</sup>

The federal conspiracy statute<sup>21</sup> applies to render individuals besides a Medicaid applicant accountable under the Social Security Act provision criminalizing certain transfers of assets made for purpose of qualifying for Medicaid benefits.<sup>22</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

District court acted within its discretion in calculating and ordering defendants, a married couple who received Medicaid benefits from state of New York despite their receipt of income far exceeding the \$3,000 per month limit for Medicaid eligibility, to make restitution, under the Mandatory Victims Restitution Act (MVRA), in a dollar amount that included Medicaid benefits received by wife's five children, who received benefits under her ex-husband's case number; the five children were counted as part of defendants' family, and the defendants' family income, which was misreported, contributed to the calculation of the erroneous Medicaid payments made to those children. [18 U.S.C.A. §§ 641, 3663A. \*United States v. Atias\*, 807 Fed. Appx. 80 \(2d Cir. 2020\).](#)

To convict a physician of health care fraud, relating to Medicare reimbursement for home health care services, the prosecution must provide evidence that the physician executed a fraudulent scheme with knowledge that the patient was not homebound. [18 U.S.C.A. § 1347. \*United States v. Barnes\*, 979 F.3d 283 \(5th Cir. 2020\).](#)

The government presented no evidence that defendant, a physician who worked for home health care agency, certified patient for home health care services knowing that patient was not homebound and thus was ineligible for such services, thus precluding her conviction for health care fraud; although government presented evidence of defendant's participation in lax practices, and patient's primary care physician testified that patient's mobility was not restricted, it failed to present evidence imputing that knowledge to defendant, and it did not provide testimonial or documentary evidence proving that defendant knew patient. [18 U.S.C.A. § 1347. \*United States v. Ganji\*, 880 F.3d 760 \(5th Cir. 2018\).](#)

Evidence was sufficient to prove that defendant acted knowingly and willfully when he made kickback payments for patient referrals, in violation of the anti-kickback statute; defendant, as hospital administrator, knew the hospital could not pay for referrals because he had a copy of the employee handbook which set forth his legal obligations, including the obligation not to offer kickbacks, he supervised community educators, which suggested he understood their job and legal responsibilities, and the fact that he signed up one individual as a community educator, even though that individual never performed any responsibilities associated with the job, indicated defendant knew obtaining and paying for referrals from that individual's mother was illegal. Social Security Act § 1128B, [42 U.S.C.A. § 1320a-7b\(b\)\(2\). \*United States v. McCardell\*, 750 Fed. Appx. 314 \(5th Cir. 2018\).](#)

Fact that defendant spent remunerations he received from physical therapy companies for providing them with patients and their identifying Medicare information on his clinics overhead expenses did not preclude his conviction for illegal remunerations for health care referrals, where, without patients or their identifying Medicare information, physical therapy companies could not have submitted claims to Medicare for non-compensable massage and acupuncture services provided by defendant. Social Security Act § 1128B, [42 U.S.C.A. § 1320a-7b\(b\)\(1\)\(A\). \*United States v. Hong\*, 938 F.3d 1040 \(9th Cir. 2019\).](#)

Defendant who owned and operated acupuncture and massage clinics referred patients within meaning of Medicare anti-kickback statute, even though they learned of his clinics on their own, through word of mouth, in light of evidence that defendant referred patients Medicare information to physical therapy companies, which then billed Medicare for compensable physical therapy services that patients had never received, and paid defendant's companies portion of payments they received from Medicare. Social Security Act § 1128B, [42 U.S.C.A. § 1320a-7b\(b\)\(1\)\(A\). \*United States v. Hong\*, 938 F.3d 1040 \(9th Cir. 2019\).](#)

The Anti-Kickback Statute (AKS) does not criminalize referrals for services paid for by Medicare or Medicaid; rather, it criminalizes knowing and willful acceptance of remuneration in return for such referrals. Social Security Act, § 1128B(b), 42 U.S.C.A. § 1320a-7b(b). *U.S. ex rel. Jamison v. McKesson Corp.*, 900 F. Supp. 2d 683 (N.D. Miss. 2012).

**[END OF SUPPLEMENT]**

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Footnotes

- 1 42 U.S.C.A. § 1320a-7b(a) to (e).
- 2 42 U.S.C.A. § 1320a-7b(b).
- 3 *U.S. v. Hancock*, 604 F.2d 999 (7th Cir. 1979).
- 4 *U.S. v. Vaghela*, 970 F. Supp. 1018 (M.D. Fla. 1997).
- 5 42 U.S.C.A. § 1320a-7b(a)(6).
- 6 *New York State Bar Ass'n v. Reno*, 999 F. Supp. 710 (N.D. N.Y. 1998).
- 7 42 U.S.C.A. § 1320a-7b(h).
- 8 42 U.S.C.A. § 1320a-7b(b).
- 9 *New Boston General Hosp., Inc. v. Texas Workforce Com'n*, 47 S.W.3d 34 (Tex. App. Texarkana 2001).
- 10 *U.S. v. Starks*, 157 F.3d 833 (11th Cir. 1998).
- 11 42 U.S.C.A. § 1320a-7b(b).
- 12 *U.S. v. McClatchey*, 217 F.3d 823 (10th Cir. 2000).
- 13 *U.S. v. LaHue*, 261 F.3d 993, 57 Fed. R. Evid. Serv. 254 (10th Cir. 2001).  
The federal statute which makes giving or receiving of any remuneration, directly or indirectly, in exchange for referrals involving federal health care program patients a felony is interpreted broadly and is violated even if only one purpose of payment is to induce future referrals. *Miller v. Haller*, 129 Idaho 345, 924 P.2d 607 (1996).
- 14 42 U.S.C.A. § 1320a-7b(b)(3)(A).
- 15 *U.S. v. Shaw*, 106 F. Supp. 2d 103 (D. Mass. 2000).
- 16 42 U.S.C.A. § 1320a-7b(b)(3).
- 17 *State v. Harden*, 938 So. 2d 480 (Fla. 2006).
- 18 42 U.S.C.A. § 1320a-7b.
- 19 42 U.S.C.A. § 1320a-7a.
- 20 42 U.S.C.A. § 1320a-7b(g).
- 21 18 U.S.C.A. § 371.
- 22 *Matter of DiCecco*, 173 Misc. 2d 692, 661 N.Y.S.2d 943 (Sup 1997).

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## 79 Am. Jur. 2d Welfare § 52

American Jurisprudence, Second Edition | May 2021 Update

### Welfare Laws

Eric C. Surette, J.D.

## II. Federally Assisted Programs

### B. Particular Programs

#### 4. Homeless Assistance Programs

## § 52. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Public Assistance](#)  28, 105

Congress has found that the federal government has a clear responsibility and an existing capacity to fulfill a more effective and responsible role to meet the basic human needs and to engender respect for the human dignity of the homeless.<sup>1</sup> Congress created the applicable statute relating to homeless assistance<sup>2</sup> to provide funds for programs to assist the homeless, with special emphasis on elderly persons, handicapped persons, families with children, Native Americans, and veterans.<sup>3</sup>

Provision is also made by federal statute for the education of homeless children and youths<sup>4</sup> the applicable provisions providing grants to states, local activities, and local educational agencies for such purpose,<sup>5</sup> the statement of policy of Congress in this regard providing,<sup>6</sup> among other things, that each state educational agency must ensure that each child of a homeless individual and each homeless youth has equal access to the same free, appropriate public education, including a public preschool education, as provided to other children and youths,<sup>7</sup> that homelessness alone is not sufficient reason to separate students from the mainstream school environment<sup>8</sup> and that homeless children and youths should have access to the education and other services that such children and youths need to ensure that such children and youths have an opportunity to meet the same challenging state student academic achievement standards to which all students are held.<sup>9</sup>

## CUMULATIVE SUPPLEMENT

### Statutes:

[42 U.S.C.A. § 11431\(3\)](#), was amended effective December 10, 2015, by striking "alone."

[42 U.S.C.A. § 11431\(4\)](#), was amended effective December 10, 2015, by striking "challenging State student academic achievement standards" and inserting "challenging State academic standards."

**[END OF SUPPLEMENT]**

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Footnotes

- |   |   |
|---|---|
| 1 | <a href="#">42 U.S.C.A. § 11301(a)(6)</a> .   |
| 2 | <a href="#">42 U.S.C.A. §§ 11301 et seq.</a>  |
| 3 | <a href="#">42 U.S.C.A. § 11301(b)(3)</a> .   |
| 4 | <a href="#">42 U.S.C.A. §§ 11431 et seq.</a>  |
| 5 | <a href="#">42 U.S.C.A. §§ 11432, 11433</a> . |
| 6 | <a href="#">42 U.S.C.A. § 11431</a> .         |
| 7 | <a href="#">42 U.S.C.A. § 11431(1)</a> .      |
| 8 | <a href="#">42 U.S.C.A. § 11431(3)</a> .      |
| 9 | <a href="#">42 U.S.C.A. § 11431(4)</a> .      |

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## 79 Am. Jur. 2d Welfare § 53

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### Welfare Laws

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### II. Federally Assisted Programs

#### B. Particular Programs

#### 4. Homeless Assistance Programs

## § 53. Emergency Food and Shelter Program

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Public Assistance](#)  [28](#), [31](#), [105](#), [106](#)

Congress has established the Emergency Food and Shelter Program National Board to carry out the provision of the Emergency Food and Shelter Program.<sup>1</sup> Under the Emergency Food and Shelter Program, the Director of the National Board is required to award grants for the purpose of providing emergency food and shelter to needy individuals through private nonprofit organizations and local governments to support eligible activities provided for under the Program.<sup>2</sup> Grants to the National Board may be used:

- (1) to supplement and expand ongoing efforts to provide shelter, food, and supportive services for homeless individuals with sensitivity to the transition from temporary shelter to permanent homes, and attention to the special needs of homeless individuals with mental and physical disabilities and illnesses, and to facilitate access for homeless individuals to other sources of services and benefits;
  - (2) to strengthen efforts to create more effective and innovative local programs by providing funding for them; and
  - (3) to conduct minimum rehabilitation of existing mass shelter or mass feeding facilities, but only to the extent necessary to make facilities safe, sanitary, and bring them into compliance with local building codes.<sup>3</sup>
- The National Board may only provide funding provided under the Emergency Food and Shelter Program for programs undertaken by private nonprofit organizations and local governments, and programs that are consistent with the purposes of the program.<sup>4</sup> The National Board may not carry out programs directly.<sup>5</sup>

Footnotes

- 1 42 U.S.C.A. § 11331.
- 2 42 U.S.C.A. § 11341.
- 3 42 U.S.C.A. § 11343(a).
- 4 42 U.S.C.A. § 11343(b)(1).
- 5 42 U.S.C.A. § 11343(b)(2).

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## 79 Am. Jur. 2d Welfare § 54

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### Welfare Laws

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## II. Federally Assisted Programs

### B. Particular Programs

#### 4. Homeless Assistance Programs

## § 54. Housing assistance

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Public Assistance](#)  [28](#), [31](#), [105](#), [106](#)

In order to assist in the provision of shelter for the homeless, Congress has provided, by statute, the following programs:

(1) Emergency Solutions Grants Program;<sup>1</sup>

(2) Continuum of Care Program;<sup>2</sup> and

(3) Rural Housing Stability Assistance Program.<sup>3</sup>

The Secretary of Housing and Urban Development is empowered to determine the availability of excess property or surplus property or property that is described as unutilized or underutilized and to make such property available to assist the homeless.<sup>4</sup> Additionally, the Administrator of General Services is authorized to require each state agency administering specified state plans to make generally available information about surplus personal property which may be used in the provision of food, shelter, or other services to homeless individuals.<sup>5</sup>

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### Footnotes

<sup>1</sup> 42 U.S.C.A. §§ 11371 to 11378.

<sup>2</sup> 42 U.S.C.A. §§ 11381 to 11388.

<sup>3</sup> 42 U.S.C.A. § 11408, 42 U.S.C.A. § 11408a.

<sup>4</sup> 42 U.S.C.A. § 11411.

5 [42 U.S.C.A. § 11412.](#)

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## 79 Am. Jur. 2d Welfare § 55

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### Welfare Laws

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## II. Federally Assisted Programs


### B. Particular Programs

#### 5. National Volunteer Antipoverty Programs; VISTA

## § 55. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Public Assistance](#)  26, 32

The Domestic Volunteer Services Act of 1973 provides, under specific statutes,<sup>1</sup> for the VISTA program of full-time volunteer service, together with appropriate powers and responsibilities designed to assist in the development and co-ordination of such program.<sup>2</sup> The purpose of the VISTA program is to strengthen and supplement efforts to eliminate and alleviate poverty and poverty-related problems in the United States by encouraging and enabling persons from all walks of life, all geographical areas, and all age groups, including low-income individuals, elderly, and retired Americans, to perform meaningful and constructive volunteer service in agencies, institutions, and situations where the application of human talent and dedication may assist in the solution of poverty and poverty-related problems and secure and increase opportunities for self-advancement by persons affected by such problems.<sup>3</sup>

Provision is also made by statute for special volunteer programs;<sup>4</sup> the applicable statutes<sup>5</sup> provide for special emphasis and demonstration volunteer programs, together with appropriate powers and responsibilities designed to assist in the development and coordination of such programs.<sup>6</sup> The purpose of such statutes is to strengthen and supplement efforts to meet a broad range of needs, particularly those related to poverty, by encouraging and enabling persons from all walks of life and from all age groups to perform meaningful and constructive volunteer service in agencies, institutions, and organizations where the application of human talent and dedication may help to meet such needs. It is the further purpose of this part to provide technical and financial assistance to encourage voluntary organizations and volunteer efforts at the national, State, and local level.<sup>7</sup>

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### Footnotes

1                    42 U.S.C.A. §§ 4951 et seq.  
2                    42 U.S.C.A. § 4951.  
3                    42 U.S.C.A. § 4951.  
4                    42 U.S.C.A. §§ 4991 et seq.  
5                    42 U.S.C.A. §§ 4991 et seq.  
6                    42 U.S.C.A. § 4991.  
7                    42 U.S.C.A. § 4991.

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## 79 Am. Jur. 2d Welfare § 56

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### Welfare Laws

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## II. Federally Assisted Programs


### B. Particular Programs

#### 5. National Volunteer Antipoverty Programs; VISTA

## § 56. Service commitment and term of persons serving under VISTA program

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Public Assistance](#)  26, 32

Volunteers serving under the VISTA program are required to make a full-time personal commitment to combating poverty and poverty-related problems.<sup>1</sup> To the maximum extent practicable, the requirement for full-time commitment must include a commitment to live among and at the economic level of the people served, and to remain available for service without regard to regular working hours, at all times during their periods of service, except for authorized periods of leave.<sup>2</sup> Volunteers may be enrolled for periods of service not exceeding two years, but for not less than one year periods, unless a period of service of less than one year is necessary to meet a critical scarce-skill need.<sup>3</sup> No volunteers shall serve for more than a total of five years.<sup>4</sup>

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### Footnotes

- <sup>1</sup> 42 U.S.C.A. § 4954(a).
- <sup>2</sup> 42 U.S.C.A. § 4954(a).
- <sup>3</sup> 42 U.S.C.A. § 4954(b)(1), (2).
- <sup>4</sup> 42 U.S.C.A. § 4954(b)(3).

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## 79 Am. Jur. 2d Welfare § 57

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### II. Federally Assisted Programs


#### B. Particular Programs

##### 6. Other Programs

## § 57. Assistance to persons returned from foreign country

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Public Assistance](#)  26, 32

The Secretary of Health and Human Services is authorized to provide temporary assistance to citizens of the United States and to dependents of citizens of the United States if they are identified by the Department of State as having returned, or been brought, from a foreign country to the United States because of the destitution of the citizen or the illness of such citizen or any of his or her dependents or because of war, threat of war, invasion, or similar crisis, and are without available resources.<sup>1</sup>

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### Footnotes

<sup>1</sup> [42 U.S.C.A. § 1313\(a\)\(1\)](#).

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## 79 Am. Jur. 2d Welfare § 58

American Jurisprudence, Second Edition | May 2021 Update

Welfare Laws

Eric C. Surette, J.D.

### II. Federally Assisted Programs

#### B. Particular Programs

##### 6. Other Programs

## § 58. Repairs to homes of persons receiving federal assistance

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Public Assistance](#)  28, 105

There is provision in the Social Security Act for payments for repairs to a home owned by the recipient of aid or assistance under specified federal assistance programs if such home is so defective that continued occupancy is unwarranted.<sup>1</sup>

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### Footnotes

<sup>1</sup> [42 U.S.C.A. § 1319](#).

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## 79 Am. Jur. 2d Welfare § 59

American Jurisprudence, Second Edition | May 2021 Update

Welfare Laws

Eric C. Surette, J.D.

### II. Federally Assisted Programs

#### B. Particular Programs

##### 6. Other Programs

## § 59. Programs for older Americans and disabled

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Public Assistance](#)  170 to 196

### Treatises and Practice Aids

[Federal Procedure, L. Ed. §§ 42:1137 to 42:1161](#)

Pursuant to the congressional finding that older Americans deserve, inter alia, physical and mental health services; suitable housing; a comprehensive array of community-based, long-term care services; and efficient community services,<sup>1</sup> the following programs, providing grants to the states for the purpose of fulfilling the goals of each program, have been established:

- (1) supportive services;<sup>2</sup>
- (2) nutrition services;<sup>3</sup>
- (3) disease prevention and health promotion services;<sup>4</sup> and
- (4) National Family caregiver support program.<sup>5</sup>

Further, the Secretary of Labor is authorized to establish an older American community service employment program.<sup>6</sup> Provision is also made for state programs for the prevention of elder abuse, neglect, and exploitation,<sup>7</sup> and for the development of legal assistance programs for the elderly.<sup>8</sup>

The purpose of the Developmental Disabilities Assistance and Bill of Rights Act of 2000<sup>9</sup> is to assure that individuals with developmental disabilities and their families participate in the design of and have access to needed community services, individualized supports, and other forms of assistance that promote self-determination, independence, productivity, and integration and inclusion in all facets of community life through culturally competent programs authorized under the Act.<sup>10</sup>

The Act specifically sets forth enumerated rights enjoyed by persons with developmental disabilities.<sup>11</sup> In furtherance of the purposes of the Act, the Secretary of Health and Human Services is required to make grants to the states on a competitive basis, in accordance with the provisions of the Act, to support activities designed to assist states to develop and implement, or expand and enhance, a statewide system of family support services for families of children with disabilities that accomplishes the purposes of the Act.<sup>12</sup> The states are required to apply to the Secretary for such grants.<sup>13</sup> In carrying out activities authorized under the Act, a state is required to ensure that such activities address the needs of families of children with disabilities from unserved or underserved populations.<sup>14</sup>

## CUMULATIVE SUPPLEMENT

### Statutes:

[34 U.S.C.A. § 21711](#), as added effective October 18, 2017, provides that the U.S. Attorney General must designate in each federal judicial district not less than one Assistant United States Attorney to serve as the Elder Justice Coordinator for the district, who, in addition to any other responsibilities, will be responsible for: (1) serving as the legal counsel for the federal judicial district on matters relating to elder abuse; (2) prosecuting, or assisting in the prosecution of, elder abuse cases; (3) conducting public outreach and awareness activities relating to elder abuse; and (4) ensuring the collection of data required to be collected under applicable provision. The Attorney General, in consultation with the Director of the Federal Bureau of Investigation, must ensure the implementation of a regular and comprehensive training program to train agents of the Federal Bureau of Investigation in the investigation and prosecution of such crimes and the enforcement of laws related to elder abuse.

### Cases:

When a defendant charged with exploitation of the elderly alleges that funds taken from the alleged victim were used for the victim's benefit, the State must submit evidence to the contrary; such contrary evidence could include unexplained deposits in the defendant's bank accounts or acquisitions of property. [Fla. Stat. Ann. § 825.103\(1\)\(b\)](#). [Johnson v. State](#), 267 So. 3d 16 (Fla. 4th DCA 2019).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 [42 U.S.C.A. § 3001](#).
- 2 [42 U.S.C.A. § 3030d](#).
- 3 [42 U.S.C.A. §§ 3030e et seq.](#)
- 4 [42 U.S.C.A. §§ 3030m et seq.](#)

5	42 U.S.C.A. §§ 3030s et seq.
6	42 U.S.C.A. §§ 3056 et seq.
7	42 U.S.C.A. § 3058i.
8	42 U.S.C.A. § 3058j.
9	42 U.S.C.A. §§ 15001 et seq.
10	42 U.S.C.A. § 15001(b).
11	42 U.S.C.A. § 15009.
12	42 U.S.C.A. § 15093(a).
13	42 U.S.C.A. § 15094.
14	42 U.S.C.A. § 15096(b).

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## 79 Am. Jur. 2d Welfare § 60

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### Welfare Laws

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### II. Federally Assisted Programs


#### B. Particular Programs

#### 6. Other Programs

## § 60. Legal Services Corporation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [United States](#)  53(1)

In order to provide equal access to the system of justice for individuals who seek redress of grievances<sup>1</sup> and to provide legal services for persons who would not otherwise be able to afford adequate legal counsel,<sup>2</sup> Congress established the Legal Services Corporation for the purpose of providing financial support for legal assistance in noncriminal proceedings or matters to persons financially unable to afford legal assistance.<sup>3</sup> The Legal Services Corporation is empowered to, among other things, appoint personnel to carry out its purposes,<sup>4</sup> and to provide financial assistance to qualified programs furnishing legal assistance to eligible clients and to make grants to individuals, partnerships, firms, corporations, nonprofit organizations, and state and local governments for the purpose of providing legal assistance to eligible clients.<sup>5</sup>

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### Footnotes

- <sup>1</sup> 42 U.S.C.A. § 2996(1).
- <sup>2</sup> 42 U.S.C.A. § 2996(2).
- <sup>3</sup> 42 U.S.C.A. § 2996b(a).
- <sup>4</sup> 42 U.S.C.A. § 2996d(b)(1).
- <sup>5</sup> 42 U.S.C.A. § 2996e(a).

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## 79 Am. Jur. 2d Welfare § 61

American Jurisprudence, Second Edition | May 2021 Update

### Welfare Laws

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## II. Federally Assisted Programs

### B. Particular Programs

#### 6. Other Programs

## § 61. Disaster relief

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Public Assistance](#)  31

The Disaster Relief Act of 1974<sup>1</sup> was enacted to provide an orderly and continuing means of assistance by the federal government to state and local governments in carrying out their responsibility to alleviate the suffering and damage resulting from certain disasters.<sup>2</sup> The Act, in addition to providing for federal and state disaster preparedness programs,<sup>3</sup> disaster warnings,<sup>4</sup> and the administration of disaster assistance,<sup>5</sup> makes provision for major disaster assistance programs in many specific areas,<sup>6</sup> emergency assistance programs,<sup>7</sup> and emergency preparedness.<sup>8</sup>

### Definitions:

"Major disaster" means any natural catastrophe (including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance to supplement the efforts and available resources of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.<sup>9</sup>

The Federal Emergency Management Agency (FEMA) violated a mandatory requirement, under the Stafford Act governing disaster relief,<sup>10</sup> precluding sovereign immunity claims, when it failed to notify persons displaced by a major hurricane that they were not required to apply for a Small Business Administration Loan in order to apply for temporary housing under the Act.<sup>11</sup> FEMA also violated mandatory requirements, under Stafford Act disaster relief provisions,<sup>12</sup> when it failed to provide financing for persons lodged in hotels, after being displaced by a major hurricane, to remain in the hotels until their claim for assistance was either accepted or rejected, or until a specified final date.<sup>13</sup>

## CUMULATIVE SUPPLEMENT

### Statutes:

44 C.F.R. Pt. 333 (44 C.F.R. §§ 333.1 to 333.84), as added effective May 13, 2020, creates the Emergency Management Priorities and Allocations System (EMPAS) (44 C.F.R. §§ 333.2 to 333.3), implementing those priorities and allocations authorities (44 C.F.R. §§ 333.20 to 333.36) under the Defense Production Act that are the subject of a delegation from the President to the Secretary of Homeland Security and re-delegated to the Federal Emergency Management Agency (FEMA) Administrator, or to the FEMA Administrator directly.

### Cases:

Conduct of Federal Emergency Management Agency (FEMA) in administering transitional shelter assistance (TSA) benefits under the Stafford Act after Hurricane Maria did not create property interest for evacuees from Puerto Rico in continued assistance until placed into temporary housing assistance (THA) program, as required for claim that termination of such benefits violated Fifth Amendment procedural and substantive due process; rules and regulations regarding such benefits made it clear that relief did not continue indefinitely. *U.S. Const. Amend. 5*; 42 U.S.C.A. § 5170a. *Santos v. Federal Emergency Management Agency*, 327 F. Supp. 3d 328 (D. Mass. 2018).

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### Footnotes

- 1 42 U.S.C.A. §§ 5121 et seq.
- 2 42 U.S.C.A. § 5121(b).
- 3 42 U.S.C.A. § 5131.
- 4 42 U.S.C.A. § 5132.
- 5 42 U.S.C.A. §§ 5141 et seq.
- 6 42 U.S.C.A. §§ 5170 et seq.
- 7 42 U.S.C.A. §§ 5191 to 5193.
- 8 42 U.S.C.A. §§ 5195 et seq.
- 9 42 U.S.C.A. § 5122(2).
- 10 42 U.S.C.A. § 5174(a)(2).
- 11 *McWaters v. Federal Emergency Management Agency*, 408 F. Supp. 2d 221, 14 A.L.R. Fed. 2d 755 (E.D. La. 2005), opinion modified, (Jan. 12, 2006).
- 12 42 U.S.C.A. § 5155(a).

13

[McWaters v. Federal Emergency Management Agency](#), 408 F. Supp. 2d 221, 14 A.L.R. Fed. 2d 755 (E.D. La. 2005), opinion modified, (Jan. 12, 2006).

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